CONCEPT OF STATE AND LAW IN THE MUGHAL EMPIRE

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INTRODUCTION

The political history of the Mughals and their administrative and quasi-religious institutions have attracted the attention of eminent scholars and works of great merit have come out on the subject. But comparatively little attention has been paid to the concept of state and law that prevailed during the Mughal period. The Mughals, who ruled India for more than three hundred years, definitely had their own ideals of government and they were sagacious and competent enough to evolve a state machinery which could give effect to their ideals. A dynasty which could stay in command for such a long period could not govern without laws to guide its various activities. In the present work an attempt has been made to study the Mughal concept of state and law and to show that despite the observations of the foreign travellers to the contrary, the Mughals had developed a considerable mass of legal postulates to govern various branches of state actions.

Being Muslims, the Mughals were expected to adopt the political system of Islam, to follow the Islamic law and to act upon it in administrative matters. But in the formation of the Mughal state several factors played contributory role with varying degrees. These factors comprised religious inclination of its founders, their origin and background and the prevalent political system of the country of their adaptation. Their own political heritage was rich and as being

descendants of Changez Khan and Timur, the Mughals could not severe relations from their past completely. Then they had to face the peculiar Indian situation where majority of the population was composed of non-Muslims with their own political, social and economic institutions.

The Islamic concept of a state signified a political organization established for the purpose of enabling the Muslim community to live in accordance with Islamic ideals in all spheres of life. The ruler under such political set-up constituted the highest executive who was inter alia the commander of the faithful and the fountain of justice. But law-making did not fall within the purview of his prerogatives. He was only a supplant to the law; he could neither repudiate nor modify it.[1] He was authorised to exercise his discretion in controversial matters and to choose any one of the various interpretations given by the jurists on any point of difference.[2]

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1. Abul Hasan Ali Mawardi, al-Ahkam-us Sultania, Cairo, 1909, p. 3; Ibn Khaldun, Muqaddama, Cairo, 1348 A.H., p. 159; Fazl bin Ruzbehan, Suluk-ul Muluk, Rotograph No. 46 (MS. British Museum Or. 253), Research Library, Department of History (AMU., Aligarh), ff. 19a-20b.

2. According to the authoritative view of the jurists, to be entitled to exercise discretionary rights or to give an independent reasoning (ijtihad) a ruler should be endowed with ability to judge the merits of different interpretations and should possess sufficient knowledge and legal acumen to arrive at a sound decision. (Abu Ishaq Shatibi, Al-Muwafiqat fi usul-il Shariat, Cairo, Vol. IV, pp. 105-7; Shah Waliullah, Hujjat-ullah il Baligha, Cairo, 1286, Pt. I, pp. 156-57; The Encyclopaedia of Islam, 1971, Vol. III, pp. 1026-27 (article on ijtihad by D.B.Macdonald).

The Mughal emperors have apparently accepted the supremacy of the *shariat* law over the state, at least in theory. They did not consider themselves above the law, nor did they claim to have the power of legislation. Even the *mahsar* issued at the instance of Akbar did not give him right to change the law. It only emphasised the discretionary rights which a Muslim ruler was entitled to use in controversial matters.[1] But in Mughal India the law seems to have been divided for all practical purposes in two categories - religious and political.[2] What happened actually was that the emperors placed the matters relating to religious obligations, marriage, divorce, inheritance, pious endowment, etc., under the jurisdiction of religious authorities (*qazis*, *muftis* or *sadrs*) and paid due regard to their opinion and decisions in these matters. But in political affairs they considered themselves as sole interpreter

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1. Abdul Qadir Badauni, *Muntakhab-ut Tawarikh*, Calcutta, 1968, II, p. 270.

2. Ali Muhammad Khan, *Mirat-i Ahmadi*, Calcutta, 1925, I, p. 257. This division of law also existed during the Delhi Sultanate. Alauddin Khalji is reported to have declared that the polity and government were one thing and the rules and decrees of law another. The rules of government were to be administered by the kings and the *shariat*'s rules by the *qazis* and *muftis*. Muhammad bin Tughlaq has expressed his inability to observe the limits of the *shariat* in giving punishment for political offences and resolved to take decision on his own in such matters according to the exigencies of time. (Ziauddin Barani, *Tarikh-i-Firuz Shahi*, Calcutta, 1862, pp. 289, 510-11).

of law and did not brook interference from the *ulama* and jurists. In this sphere the judgements of the *qazis* and jurists were not only set aside by the emperors, they were sometimes also relieved of their job assignments if they did not conform to the political policies of the rulers so as to serve their interest to their full satisfaction and to flatter their vanity.[1] To deal with the administrative problems, they now and then promulgated new regulations paying little regard to the consistency of their edicts with the ideals of Islam or sanction from the *shariat*. Thus the limitations imposed by the *shariat* to the exercise of their authority were not fully observed.

The Mughals did not exclusively base their administrative regulations and legal canons on the postulates and the edicts of the *shariat*. An enunciation of the source material and the set of rules, criteria and administrative manuals makes

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1. After the suppression of Khan-Zaman's rebellion during the reign of Akbar, Qazi Tawaisi had declared that it would be against the *shariat* to kill the men of the rebel's party and to confiscate their property after the battle was over. As the decision was not acceptable to the Emperor, Qazi Tawaisi was replaced by Qazi Yaqub (Badauni, II, pp. 100-101, III, p. 79). Aurangzeb is reported to have ignored the advice of *Qazi-ul-Quzat*, Shaikh-ul-Islam and Qazi Abdullah that fighting with the Sultans of Bijapur and Golkunda was illegal as they were believers. Muhammad Hashim Khafi Khan, *Muntakhab-ul Lubab*, Calcutta, 1874, II, p. 439; *Waqai-i Nimat Khan 'Ali*, Nawal Kishore, 1873, pp. 22-24.

it abundantly clear that there existed four kinds of legal codes and set of regulations to serve as guides in the legal framework of the empire.

(a) Canon Law

It was purely personal law of Islam and was exclusively applied to the Muslims in such matters as inheritance, succession, marital rights, guardianship, etc.

(b) Law of the land or Common Law

It signified the law that governed the system of taxation, commercial transaction and regulated customs, transit duties, barter, exchange, sale and contract. The common law also dealt with the offences involving maintenance of internal peace and order or with the criminal acts recognised by age-old human society, such as adultery, murder, theft, robbery, etc. The law of the land was common to all subjects of the state.

(c) State Law (zawabit or qawanin-i Shahi)

This consisted of regulations enacted by the state and of executive decrees issued by the emperors from time to time for conduct of the state affairs and governance of the country. The sphere of the state law was naturally wide enough comprehending all those aspects for which no legal precedent was available or the existing law was

not effective to cope with the new administrative problems.

(d) <u>Customary Law</u> (<u>qanun-i urf</u> or <u>adat</u>).

The fourth set of the Mughal law comprised the local customs, traditions and the prevalent practices. The customs sanctioned by traditions have been commonly recognised as an important source of law. The Mughals as well as their counterparts in other Muslim countries have given due weightage ranging from tacit forbearance to actual acceptance and sanction to customs and local traditions to add to the dimensions of the legal framework in operation in the empire. The customary law, in fact, served as an expedient instrument for the Muslim rulers in tackling the administrative problems. It also provided them with a legal ground for justifying their enactments in temporal matters.[1]

1. The Hanafite and Malikite both schools recognise within limits the validity of the customary law, while the Shafiites do not accept it as a source of law. However, the commonly accepted opinion of the jurists is that a custom is not valid if it contravenes the explicit text of the <u>Quran</u> or <u>Hadis</u>. It can overrule a <u>qiyas</u>, but cannot abrogate the rulings of the <u>Quran</u> or <u>Hadis</u> (Al-Sarkhasi, <u>Sharh-us Siyar-il Kabir</u>, Hyderabad, 1336, AH. I, pp. 194, 198, II, p. 296; IV, p. 16).

The Mughal emperors took into account the local customs and practices and retained them in several spheres of state administration. Apart from the significance given to the local customs in the disposal of cases by the village panchayats, they were also applied to the matters relating to revenue, duties on merchandise, commercial transactions, contract, etc. The local traditions were so firmly rooted in certain parts of the country that sometime new converts to Islam carried them into the Muslim society though many such practices were contrary to the Islamic values and recognised certain un-Islamic laws such as the exclusion of daughters from inheritance. But evidence are not lacking to suggest that whenever any specific case of violating the Islamic law was brought to the notice of the emperor he took steps to put an end to the illegal practice.[1]

The impact of the local customs and traditions on the working of the Mughal government apart, the significance of the Mongol customs and traditions cannot be overlooked. In this reference the Tura-i Changezi which was considered an important

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1. Abdul Hamid Lahori, Badshah Nama, Calcutta, 1868, I, pp. 57-58; Amin Qazwini, Badshah Nama, transcript, No. 13, (MS. Raza Library, Rampur), Research Library, Department of History (AMU., Aligarh), pp. 355-56, 633-34; Shihabuddin Talish, Fathiyya-i Ibriya, Rotograph, No.148 (MS. Bodleian Or. 589) Research Library, Department of History (AMU., Aligarh), f. 131b.

constitutional code by the Mughals is noteworthy. Regarding the Tura Babur observes, "My forefathers and family had always sacredly observed the rules of Chinges. In their parties, their courts, their festivals, and their entertainments, in their sitting down and rising up, they never acted contrary to the Tura-i Chingesi. The Tura-i Chingesi certainly possessed no divine authority, so that any one should be obliged to conform to them; every man who has a good rule of conduct ought to observe it. If the father has done what is wrong, the son ought to change it for what is right."[1] Several other references in the contemporary sources to the observance of and respect for the Tura in the royal court, administrative procedure and social etiquettes testify the fact ~~the fact~~ that the impact of the Mongol traditions and law was indelible on the Mughal Empire.[2]

The Mughal emperors not only incorporated the local customs and traditions into the Muslim administrative system, they also introduced changes and modifications in the Islamic law

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1. Memoirs of Babur, (Eng. tr. John Leden and William Erskine), Oxford University Press, 1921, p. 7.

2. Badauni, II, pp. 61, 278-79; Abul Fazl, Akbar Nama, Calcutta, 1886-88, III, p. 63; Tuzuk-i Jahangiri, Aligarh, 1864, p. 32; Mutamad Khan, Iqbal Nama-i Jahangiri, Lucknow, 1286 AH., p. 216; Abdul Bari Mani, Asnad-us Sanadid, Ajmer, 1952, pp. 196-97.

itself. The changes and modifications are greatly in evidence in the laws concerning secular matters such as the administration of land revenue, imposition of taxes and duties on merchandise. Sometimes modifications were also made in the canon law on the pretence of social and political requirements. The laws relating to religious beliefs, marriage, divorce and inheritance were not altered. But the penal law underwent substantial changes and it seems that even Aurangzeb, generally known as an orthodox Emperor, introduced many modifications in it. A striking illustration of such modifications is to be found in a farman of Aurangzeb (issued to the diwan of Gujarat in 1672 A.D.) dealing with various aspects of the penal code. The proclamation of this farman by Aurangzeb, when many works on the Islamic law including the Fatawa-i Alamgiri, compiled at his own instance, contained elaborate discussion on the penal law, may be explained by the fact that the Emperor considered modification in the existing law necessary in view of the new problems of state administration.

The Mughal emperors like other Muslim rulers of medieval India were Hanafites (the followers of the school of jurisprudence founded by Abu Hanifa).[1] But it is interesting to

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1. The prevalence of the Hanafite doctrines in medieval India owes to the influx of a large number of learned scholars (ulama) from Nishapur, Sanman, Ghaznin, Kashan, Balkh, Sajistan, Khwarism and Tabrez which were stronghold of the Hanafite School of Jurisprudence.

(Footnote Continued on Next Page)

note that the Mughals never felt themselves bound by any particular school of jurisprudence. If Hanafite interpretation suited their political ideology they accepted it, otherwise they asked qazis and jurists to find out legal verdicts from the other three schools which would serve their purpose.[1] It appears that they rejected the Hanafite point of view expressed by the qazis or jurists on a particular problem if that did not suit their political requirements.[2] Their acceptance or rejection

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(Previous footnote continued)

These Hanafite scholars marked so great effect on the academic climate in India specially in judicial sphere that the Hanafite School of Jurisprudence was officially accepted by the Muslim rulers and this became foundation-structure of the judicial system operating in the law courts in India (Barani, p. 353; al-Qalqashandi, Subh-ul Asha (Eng. tr. O. Sphies) Aligarh, (undated) p. 29; Badauni, Muntakhab-ut Tavarikh, III, pp. 82, 150; Lahori, I, p. 137; Muhammad Kasim, Alamgir Nama, Calcutta 1868, II, p. 1071; Mustaid Khan, Maasir-i Alamgiri, Calcutta, 1871, p. 525.

1. According to the Muslim jurists a Muslim ruler is permitted to adopt one of four schools of jurisprudence. Even after formal acceptance of one school of law he has option to decide the case according to the view of any school other than his own. (Fatawa-i Alamgiri, Matba'-i Majidi, Kanpur, 1350 AH, II, p. 359).

2. Akbar is reported to have dismissed Qazi Yaqub who had expressed his view according to the Hanafite school of law that only four wives were allowed in Islam and that mutah marriage was illegal. The new incumbent, Qazi Husain Arab, declared the validity of Mutah marriage in accordance with the view of Imam Malik and this was accepted by the emperor (Badauni, II, pp. 208-10). Aurangzeb did not accept the Hanafite point of view about illegality of execution of the Muslim prisoners of war caught in fighting with the imperial forces near the fort of Satara and chose to follow the opinion of other school of law which permitted their execution in view of the security of the state. (Hamiduddin Khan, Ahkam-i Alamgiri, Calcutta, 1928, pp. 81-82.

of one's view was based on the fact whether it proved to be politically favourable to them or not. Thus they practically regarded themselves entitled to choose the opinion of any jurists from amongst the four schools.

In regard to the application of the kind of law to the non-Muslims (i.e. Hindus) under the Mughals it is evident from the contemporary sources that they were not bound to observe the religious laws of Islam; nor they were subject to those portions of the civil law which related to the purely personal law of the Muslims such as inheritance, succession, marriage, will,etc. But the secular portion of the civil law relating to trade, exchange, sale and contract was applicable to them. They were also bound by those portions of the penal which related to the security of life and property of the common people or tranquility of the state such as theft, murder, robbery, rebellion, etc. Their cases were mostly settled by the village panchayats according to their own laws and local customs. When the cases relating to their personal law were brought to the Mughal court they were used to be decided in consultation with their own doctors of law.[1] The cases arising between a Muslim

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1. Badauni, II, p. 376; Early Travels in India, (ed. W. Foster) Oxford, 1921, pp. 315-331; Monserrate, Antony's Commentary (Eng. tr. J.S. Hoyland and S.N. Banerjee) London, 1922, p. 183; Bernier, Travels in the Mogul Empire (Eng. tr. A Constable) New Delhi, 1968, p. 30.

and a non-Muslim were generally disposed of on the basis of the principle of equity. There are ample evidence to show that the non-Muslims were given right of claiming retaliation in murder cases and that the Muslims were actually punished for committing offence against person or property of the non-Muslims.[1] According to the Islamic law a non-believer was not entitled to give evidence against a believer, but the cases of acceptance of the evidence of the Hindus against the Muslims are recorded in the sources.[2] The observance of the Hanafite doctrines in India also marked a great impact on the attitude of the Muslim rulers towards the non-Muslims as the Hanafite school was more catholic than others in its treatment of the non-Muslims.[3]

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1. Waqai-i Ajmer, transcript (MS. Asfia Library, Hyderabad, 2242), No. 15, Research Library, Department of History (AMU., Aligarh), pp. 68, 99, 183, 191, 232; Akhbarat, 47th Regnal Year, f. 47; English Factories, II (1622-23), p. 284; Nicolo, Manucci, Storia do Mogor (Eng. tr. W. Irvine) Calcutta, 1965, I, p. 175.

2. Manrique (Travels, ed. Luard and Hoston, Haklyut Society, 1927, II, p. 112).

3. Fatawa-i Alamgiri, compiled from the Hanafite point of view (II, pp. 277-78) lays down the principle that non-Muslim subject of a Muslim state are not subject to the laws of Islam. Their legal relations are to be regulated according to the precepts of their own faith.

It is true that no manual of law or statute-book of the modern times existed during the Mughal period, but it cannot be denied that under the Mughals certain rules and norms were at work for the punishment of offenders and criminals, to regulate the inland and the foreign trade, to govern the agrarian relations, to determine the proprietary rights and to guide the international relations. Besides, the Mughals had also taken practical measures in dealing with the different political and administrative problems. Out of these rules and practices the laws can be sorted out and placed under different categories in accordance with the subject. So on the basis of the legal formulations of the Mughals and their actual practices, I have ventured to make an attempt in the following chapters to work out the Mughal penal law, property law, commercial law, international law and agrarian law.

In dealing with the manifold aspect of government, administration and law making in a country or dynasty, it is essential to know the conception of the state and its evolution. So I have discussed in the first chapter the theory of state as presented by the well-known Muslim political theorists, scholars and historians from Mawardi to Abul Fazl. I have critically examined their concept of state, functions of the government, duties of a ruler and obligations of the subjects, and have made an assessment of the contemporary political set up to find out the relation between their theory and the prevalent political system.

The chapter on the penal law has been discussed on the pattern found in the works on Islamic jurisprudence where the punishment have been divided under hudud, qisas and tasir. A brief account of the Islamic penal law has been also given to determine the extent to which it had been followed or neglected by the Mughals. The study of the Mughal penal law is mostly based on the analysis of the cases and the punishments awarded for various offences.

It has been a popular conception that the idea of private property did not exist in Mughal India, at least in case of the state officials. The argument put forward for this notion was that their assets were escheated after their death. In the chapter on the property law the system of escheat has been thoroughly discussed and examined critically to appreciate the merits and demerits of the above conception. On the basis of the analysis of the actual cases of escheat it has been shown that the property of the deceased officials was escheated by the state not because the state was the proprietor of the assets left by them. The problem of the proprietary rights of the people in general in movable and immovable property has been also taken up in the light of cases of inheritance. In this regard a study has been also done of those documents which showed transfer of ownership in movable and immovable property and grant of compensation to these persons whose property was acquired by the government.

in reference to the landed property. I have discussed here only question of proprietary rights in habitable lands as ownership in cultivable lands is the main theme of the chapter on the agrarian law.

India had trading and commercial relations with the countries of east and west from times immemorial. The Mughals maintained the commercial traditions of their predecessors. The foreign merchants were granted freedom of trade and all sorts of facilities were provided to them. The Indian traders also travelled far and near to display and sell their goods of all varieties. To encourage the trade, the Mughal rulers formulated rules and regulations for the personal security of the traders. They also made provision for compensation in case of loss of the merchant's goods and property. They fixed rates of custom and transit duties and ferry charges and regularised mode of their assessment and method of collection. They also established certain norms for state monopoly and market control in some special items of trade. The rules laid down by the Mughals in connection with the above matters have been discussed in the chapter on the commercial law. Such rules may be deduced from various agreements concluded between the Mughal government and the trading companies. The farmans, dastaks and parwanas issued to the Indian and foreign merchants, and the disputed cases of the merchants brought to the court of the emperor or governor for disposal also provide useful information about this aspect.

The terms international law and international relations are of recent origin and works and digests of international law came to be prepared late in the 19th century and onward. But as a European writer has said: "It (the international law) is a system of jurisprudence which for the most part, has evolved out of the experiences and the necessities of situations, that have arisen from time to time. It has developed with the progress of civilization and with the increasing realisation by nations that their relations if not their existence, must be governed by and depend upon rules of law fairly certain and generally reasonable."[1] In fact the concept of the international law is not a boon of the modern civilization and it existed in the Islamic polity from the very beginning and voluminous works on rules guiding the international relations had been compiled by the Muslim jurists as early as in the second century of the Hijra era. The Mughals who had established one of the greatest empires of their time had set up diplomatic, commercial and cultural relations with central Asian and European nations. It was but natural that there should be some norms and principles guiding their relations. The treatment meted out to the envoys and ambassadors, arrangement for their hospitality, provisions for

1. D.C. Washington, Hockworth's Digest of International Law, U.S.A. Printing Press, 1940, Vol. I, p. 1.

their and other *foreigners'* security, dispensation of cases of alien subjects, treatment towards prisoners of war were matters about which every state has to legislate and make rules and Mughal government was no exception. So on the basis of the rules formulated to deal with these problems and the prevalent practices and conventions followed in this regard, I have attempted in the chapter on the international law to give an idea about and draw the basic rules of the international law which was in operation during the Mughal rule.

It may be clarified regarding the chapter on the agrarian law that it is based on a critical study of the view of two contemporary scholars (Shaikh Jalaluddin Thanesari and Qazi Muhammad A'la Thanwi) about proprietary rights in land and some other matters relating to landed property. Taking into account the prevailing agrarian conditions, they have expressed their views in their treatises, Risala dar bai Arazi and Ahkam-ul Arazi[1] respectively. Written under the legal framework, both the treatises are of great importance for considering the question of land ownership in Mughal India. They also provide interesting and useful information about

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1. As a part of my M.Phil requirements, I had translated the selected portions of these two works with annotation.

nature of the rights held by ruler, _zamindars_ and peasants in the land.

The present study covers the whole period of the Mughal empire, but concentration has been given to the reigns of the Great Mughals (i.e. 1556-1707) as the bulk of the available material about the subject relates to their times.

In writing the Arabic and the Persian words and putting diacritical marks on them, I have mainly followed the _Arabic-English Dictionary_ and the _Persian English Dictionary_ of F. Steingass.

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Chapter I

EVOLUTION OF THE MUSLIM THEORY OF STATE

The seventh century of the Christian era saw the rise and the expansion of Islam --- a dynamic religion, which influenced all spheres of human activity. The Prophet Muhammad combined in himself religious as well as political functions. He guided the Muslims not only as a religious leader but also performed the functions of the head of the state, the chief judge and the commander of the army. Above all, he was the law-giver in the sense that his word supported by revelation was law. According to the accepted orthodox view, God is the sole legislator; the Prophet interpreted and explained His Law to the People. Whenever he was faced with any legal problem, the revelation guided him. So his words and deeds which were explanatory to the Quran and were known as sunna became the second primary source of Islamic law, the first being the Quran. The Prophet died in 632 A.D.; his mission was already accomplished. As he was the last messenger of God and the Prophethood ended with him, there could be no successor to his Prophetic mission. But to carry on the work of defending the faith, leading the community, enforcing the shari'at and managing the affairs of the state, a successor was needed. This was the raison d'etre for choosing someone from among the Muslims to succeed him. The succession to the Prophet in this sense was called Khilafat (Caliphate) and the person who came to occupy the lofty office was known as Khalifa.

The word Khalifa, derived from the infinitive khilafat (to come after, follow, succeed), etymologically means the successor, deputy, vicegerent. The word Khalifa and its plural Khulafa' and Khala'if have been used in the Quran at several places in the sense of successor, in general.[1] But there are two Quranic verses in which the word khalifa has been specifically mentioned in reference to the Prophets, 'Adam and Daud.[2] In these verses the term khalifa denotes something more than a mere successor; it signifies a vicegerent (one who succeeds to some high function). So in technical terminology the word khalifa[3] came to be used for the successor of the Prophet who was responsible for the management of the affairs of the Muslims as leader of the community. The duties of the caliph as the successor of the Prophet were multifarious. He

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1. Quran, VII : 69, 74; X : 14, 73; XXVII : 62; XXXV : 39.

2. 'Behold, thy Lord said to the angels : "I will create a vicegerent on earth." (Quran, II : 30).

3. O David! 'We made indeed thee a vicegerent on earth' (Quran, XXXVIII : 26).

3. The terms, Amir-ul-Mominin and Imam are also used as synonyms for Khalifa. Abu Bakr, the first Caliph liked to be called Khalifa-i Rasulillah. Umar, the second Caliph, at first assumed the title of Khalifa-i Rasulillah, but later he decided to be simply called Khalifa. He was the first Caliph to have been addressed as Amir-ul Mominin apparently to emphasise his position as the commander of the faithful under whose leadership great expansion took place. The use of Imam for the Khalifa is to lay stress on his religious functions such as leading the Muslims in prayer. Ibn Khaldun, Muqaddima (Arabic), Cairo, 1348 A.H.pp.159-60; T.W. Arnold, The Caliphate, London, 1965, pp. 28-32, 42-45.

had to defend the religion, administer the state, manage the military affairs, supervise the finances, administer the justice, receive the envoys of foreign countries and to take care of the public welfare in general.

The Khalifa was as much bound by the Shariat as any other Muslim. The Quran enjoins upon the Muslims to obey those in authority (i.e. Imam or Caliph) amongst them.[2] But this obedience, as clarified by the Quran itself, was binding only so long as his orders and actions did not go against the Shariat.[3] While dealing with the legal questions he was to seek guidance from the Quranic injunctions and traditions of the Prophet (Sunna). The matters about which there was no clear ruling in the above two sources, he was to act upon ijma' (consensus of opinion of the companions of the Prophet or apply qiyas (legal deduction by analogy).[4] The institution of the caliphate under the pious caliphs (632-661) was based on the

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1. Ibn Khaldun, pp. 188-89, 182-83; Mawardi, pp.14-15 Suluk-ul Muluk, f. 19b. See also Arnold, op.cit., pp. 30-32.

2. Quran, IV, 59.

3. Quran V: 2; LX; 12; LXXVI : 24. See also Imam Tirmezi, Jami-ut Tirmezi, Delhi, 1349 A.H., pp. 275-76; /Muluk, f. 19b & T.W. Arnold, pp. 53-54.

∠ Suluk-ul

4. Tirmezi, I, p. 159; Ibn Qayyim, I'lam-ul muaqqin , Cairo (undated) Vol. I, p. 175.

Quran and the traditions of the Prophet so it was popularly known as Khilafat-i Rashida (righteous caliphate). The characteristic feature of their caliphate was the submission of the state to the Shari'at. The caliphs enjoined upon the people to obey them only so long as they acted in accordance with the Shariat.[1] Acting on the guidelines given by the Quran and Sunna, they represented the real spirit of an Islamic state in which the participation of the people in the management of the state affairs was ensured through the institution of Shura (council of elders). Although the caliph was the chief executive authority, the state affairs were managed with mutual consultation.[2] The caliph consulted the council on all important problems and its members freely expressed themselves on all points. The nature of the Shura may be understood by the contents of an address of 'Umar, the second caliph to the council, "Verily, I entreat you to share with me the burden of your affairs. Verily, I am one from amongst you. I do not desire that you should follow anything arising out of my caprice and personal opinion."[3]

1. Abu Bakr, the first caliph, had declared in his first address to the people, "Oh people verily I have received authority over you though I be not best among you; yet if I do well, support me, and if I incline to evil, then set me right ...... Obey me so long as I obey the Lord and His Prophet, and when I turn away from the Lord and His Prophet, then obedience to me shall not be binding upon you." (Abu Jafar Muhammad bin Jarir at-Tabari, Tarikh-ul Umam wa'l Muluk, Cairo, 1965, Vol. II, p. 450; Ibn Hisham, as-Sirat-u Nabawiya, Cairo, 1955M. Vol.III,p.473.

2. Ibn Qutaiba, al-Imamat w as siyasat, Cairo, 1904, p.48.

3. Abu Yusuf, Kitab-ul Kharaj, Cairo, 1352 A.H., p. 14.

As far as the manner of selecting the caliph is concerned, there had been no hard and fast rule for it. The Prophet had given no clear instruction for the procedure to be adopted for the choice of his successor. But taking inspiration from the Quran[1], he had laid great emphasis on the principle that the Muslims should settle their affairs with mutual consultation.[2] It implied that the Shura was to play the main role in the choice of his successor. The procedure adopted in the choice of the first four caliphs was also not uniform. But two things are very clear from the practices shown during this period: The Caliphate was elective and the principle of hereditary succession or consideration of blood relationship did not have any influence. It is also evident from the election procedure of the first four caliphs that it was generally followed by endorsement through ba'it[3] (oath of allegiance) by the people. Though the election being an accepted norm for the choice of the caliph, there appears to have been no uniform procedure for conducting it. It was probably left to be decided according to the socio-political traditions obtaining in a particular period and locality.

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1. Quran III : 159; XLII : 38.

2. Alauddin al-Hindi, Kanz-ul 'Ummal, Hyderabad, 1964, Vol. V, pp. 379, 466.

3. The people by taking an oath of allegiance to the caliph had to assure him of their cooperation and loyalty and the latter had to bind himself to administer the affairs of the caliphate in accordance with the principles of the Quran and traditions of the Prophet (Mawardi, pp. 4-6).

The advent of the Umayyads (661-750) to power marked a great change in the political structure of Islam. The government established by the Umayyad caliphs was in essence different from the ideal Islamic state of the pious caliphs. Certain elements of monarchy were introduced in the system. Contrary to the early established practice of electing the caliph, the idea of hereditary succession was put into practice and a governing class with people of the Umayyad dynasty at the helm of the affairs was organised. The public treasury (Bait-ul Mal) was utilized by the caliphs for their own benefits. Moreover, the institution of Shura lost the important role it had played in the administration of the state affairs during the early caliphate.[1]

The changes introduced by the Umayyads in the government set-up are sometimes justified on the ground that the socio-political conditions of the period necessitated the introduction of these changes in the system. For example designation of successor or nomination of heir-apparent by a caliph in his life-time was an effective means to prevent the Muslims from mutual rivalry and conflict on the problem of succession after his death. It is probable that under influence of the political conditions prevailing in the conquered countries they incorporated certain local traditions into the structure of the Islamic state. In

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1. Ibn Khaldun, pp. 168-174.

adopting the hereditary succession they are stated to have been inspired by the Byzantine and Sassanid empires where it was an established rule.[1]

The Abbasids (750-1258 A.D.), in spite of their claim of reviving the true spirit of the righteous caliphate,[2] were not very much different from the Umayyads. As the Abbasid revolution had ushered in a period of greater contact between the different components of society and the subsequent conquests had widened the relations of Muslims with outside world, the process of assimilation of the ideas and the practices of the conquered people further influenced the organisation of Government. The Abbasids maintained the practice of hereditary succession, but by conceding equal rights to the new converts (i.e. non-Arabs) with whose assistance they had come to power and by enlisting the sympathies of '<u>ulama</u>', they gave the appearance of an Islamic state to their government. The establishment of Abbasid rule brought to the forefront the concept of kingship to which the Persian had been accustomed from ancient times. The

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1. J.M. Hussey, <u>The Byzantine World</u>, London 1967, p.82.

2. Daud bin Ali, the uncle of Saffah (the first Abbasid Caliph), is reported to have addressed the people after the establishment of the Abbasid rule, "We pledge our words in the name of God Almighty and the Prophet and Al-Abbas that we shall rule you in accordance with the ordinances of God and shall treat you in accordance with the Book of God and behave towards the high and low as did the Prophet. (Ibn Asir, <u>al-Kamil fi at-Tarikh</u>), Cairo edition , Vol. V, p. 154.)

Persian culture and ideas had a great impact on both, the Abbasid court and the administration of state. They had created a halo of terror around their court and no person could have free access to them. Guards stood in the court with bare swords, more for striking awe in the hearts of the visitors than for the protection of the calipha. Besides, it was also during the Abbasid caliphate that the Persian institution of wazarat was introduced in the existent administrative set-up. All these changes tend to suggest that the Abbasid government which had adopted several monarchical traditions was in principle and structure different from the ideal Islamic state.

The practice of hereditary succession, resurgence of racial consideration and tribal feud was bound to bring about degeneration in the Abbasid caliphate and weakness in the central authority. These circumstances made inevitable the emergence of new minor dynasties. The heads of these dynasties established independent rule in their own kingdoms, though they formally submitted to the authority of the caliphate at Baghdad.

Apart from marking a significant transformation in the body of Islamic polity, the new developments necessitated a reconciliation between the theory of caliphate and the prevailing political conditions. The political thinkers and jurists who wrote treatises on the Islamic theory of state during the period seems to have been concious of conflict between the theory and

practice. They exerted their utmost to remove the discrepancy and tried to justify and adjust the emergence of the independent sultans with the power and authority allowed to the caliph in the Islamic theory of state. They considered such adjustment necessary to preserve the authority of the caliph who was considered the symbol of religious and political unity of the Muslims and protector of the faith throughout the Islamic world.[1] From Abul Hasan Ali Mawardi (991-1058) to Abul Fazl there have been a galaxy of scholars who have expressed their opinion about the theory of state and functions of the government. Let us now start with Mawardi whose treatise *al-Ahkam-us-Sultania* is considered a classical work on the Muslim political law.

The main contribution of Mawardi to the formulation of political theory lies in the fact that he attempted to reconcile the factual political institution with a theory reasoned out from the *Quran*, the *hadis* and the practices of the pious caliphs. Mawardi seems to have compiled the treatise to emphasise the significance of the office of the caliph in view of the rising

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1. Rosenthal, *Political Thought in Medieval Islam*, Cambridge, 1962, pp. 3-4.

2. Jurist of the Shafii School, a native of Basra Mawardi served as judge in several cities under the Abbasid caliph al-Qaim.(1031-1075 A.D.) He was finally elevated to the exalted post of *Aqzal Quzat* (chief justice). He died at Baghdad in 1058 A.D. In addition to al-Ahkam he has left a number of books the most famous of them is *Adab-ul Qazi*. See Ibn Khalkhan, *Wafiyyat-ul A'ayan* (Eng. tr.) Paris, (undated) Vol.III, pp. 224-26 & Arnold, pp. 70-72; H.A.R. Gibb, "al-Mawardi Theory of Khalifa", *Islamic Culture* (Hyderabad) Vol. XI, No. 3. July 1937, pp. 291-302.

of Buwaihids and emergence of independent sultans.[1] He desired to bring to the notice of the Muslim world the fact that the institution of caliphate formed an integral part of the politico-religious structure of Islam.

While explaining his theory of caliphate, Mawardi asserted that the Khilafat (or imamat) was the demand of the Shariat and not of reason. He defined the Khilafat as the institution which took up the work of the defence of the faith

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1. The word sultan literally means 'authority', 'power' or 'argument'. In this sense it has been used at several places in the Quran (XIV : 22, XV : 42, XVI : 99-100, XVII : 33, 65, 80, XXXIV : 21). It was from the fourth century of Hijra era that the word sultan came to be applied to a person to whom power had been delegated. Ibn Khaldun appears to be the first historian who used this title for Jafar al-Barmaki, the grand wazir of Harun Rashid (786-808) to indicate that he had been entrusted with general administration of the empire. He further explains that those persons who established their independent rule during the disintegration of the Abbasid Caliphate preferred the title of Sultan for themselves (Muqaddima, pp. 196-97). Ibn Asir and Nizam-ul-Mulk Tusi maintain that Mahmud of Ghazna was the first prince on whom this title was conferred by Abbasid Caliph, Qadir billah (991-1031). (Tarikh-ul Kamil, IX, p. 55; Nizam-ul Mulk Tusi, Tehran, 1340 A.H. Siyasat Nama, p. 70). See also Lane Poole, Muhammadan Dynasties, Paris, 1925, p. 286). 'Utbi, a contemporary of Sultan Mahmud, frequently refers to Mahmud as Sultan in his Tarikh-i-Yamini. It is, however, generally asserted that Mahmud of Ghazna was the first to assume this title, when he acquired political ascendency over Baghdad and claimed to enjoy all the powers vested in the Caliph. The Ghaznavids were followed by the Seljuqs who made free use of this title. The Mamluks and the Ottomans retained this title. With the establishment of Muslim rule in India, the Turkish rulers adopted this title to express their sovereign authority.

and the administration of state affairs after the Prophet.[1] The office of the caliph in his view was elective and the candidates and electors were subject to certain requisite qualifications. The selection of the caliph could be made only through election by qualified voters. As to validate the election the number of electors was not fixed even one person was allowed to elect in the caliph in certain circumstances.[2] Hence the validity of nomination. This was actually an attempt at justifying the practices prevalent under the Abbasids with regard to the transmission of power from one caliph to another. A similar attempt of reconciliation between theory and practice may be seen in creating a harmony between the relation of the caliph and independent sultans. During the decline of the Abbasid power various governors and <u>amirs</u> established themselves as independent rulers competing with the authority of the caliph. In this situation the dignity of the caliphate had to be maintained, but at the same time the advent of the sultanate was also to be accommodated. To solve this problem the sultanate was legitimised by investiture issued by the caliph to the Sultan.

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1. Mawardi, p. 4. This is no doubt directed against the philosophical justification based on Aristotelian dictum that "man is a social being."

2. Mawardi, pp. 4-6.

Submitting to the political reality Mawardi tried to regulate the relationship of the caliph with independent rulers such as Buwaihid amirs, Mahmud of Ghazna and Tughril Beg.[1] He pointed out that out of regard for public interest there should be an agreement between the caliph and the Sultan in relation to the rights and privileges to be granted to the latter. The independent rulers should be given certain privileges without endangering the position of caliph at the centre. The territories conquered by the Sultan should be confirmed on him, otherwise it would lead to open rebellion.[2] Thus the political theorist took cognizance of the rise of the independent states within the caliphate and made an attempt to legitimise the transfer of authority and obligations of the Sultans in their respective territories. As a matter of fact he not only attempted to reaffirm caliph's position as the head of the Muslim world but also tried to adjust the institution of the independent Sultanate as an element necessary to the ideal of the Islamic political structure. To sum up it may be said that Mawardi very carefully took the historical realities of the age into consideration and evolved a theory of state that may fit into the political structure erected by the Abbasids.

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1. Mawardi, pp. 27-29.

2. Ibid., pp. 31-32.

Besides Mawardi, some other scholars had also enunciated their theory of state keeping in view the politico-historical situation of the time in which they lived. One such attempt was made by Khwaja Abu Ali Hasan bin Ali, popularly known as Nizam-al Mulk Tusi[1] (1017-1091 A.D.), in his celebrated work called Siyasat Nama. It was compiled probably for the justification of the temporal power of the Sultan which he has usurped from the caliph.

In his opinion, kingship (Sultanate) is a gift of God and the king is responsible to God alone and nobody else for his actions. Justice is the basis of a kingdom and it gives stability to the government. In his opinion the king is responsible for peace and security of the land and he should be adorned with high qualities worthy of this exalted office.[2] To please Almighty God he should treat his people with kindness and justice. He is also required to be vigilent about the conduct of his ministers and officers for the negligence of the king and dishonesty of the ministers leads to the decay of the kingdom.[3]

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1. The author had worked as vazir under the Saljuq Sultan Alp Arsalan (1063-72) and Malik Shah (1072-92). He served them faithfully and guided them in political matters throughout their reigns them (Ibn Khalkan, I, pp. 413-14).

2. Siyasat Nama, pp. 5-8. He is of the view that a kingdom may subsist with unbelief but it cannot endure when there is oppression.

3. Siyasat Nama, pp. 18, 28, 43.

Nizam-ul-Mulk requires the king to be subject to the Shari'at and to treat its enforcement as a part of his duty. The king should not hesitate to punish people for king neglecting the Shariat rules. The author attaches great importance that the king should pay respect to the 'Ulema and should visit them at least once or twice a week to discuss the religious and legal matters.[1]

Nizam-ul-Mulk does not suggest that the Sultan should be elected and be responsible to the people as Mawardi has explained. The political situation in which the author lived did not permit him to follow in the footsteps of Mawardi. The main object of Nizam-ul-Mulk was to establish a justification for the existence of the sultanate on its own without any external agency being responsible for it while giving recognition to the caliphate as a religious institution. Theoretically, the Sultan derived his power to rule from the caliph so his office could neither be elective, nor could he be made responsible to the people. The via media he found was that the caliph was the religious head and the Sultan, held delegated authority to rule over the country under his possession.[2]

Keeping in view the scene of disorder during the decay of the Abbasid rule and the disintegration of the Seljuq

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Siyasat Nama,

1. ~~Ibid.,~~ pp. 54-55.

2. Siyasat Nama, pp. 41-42.

empire, Abu Hamid Muhammad al-Ghazzali[1] (1058-1111 A.D.) emphasised the necessity of a ruler and the obligation of the people to obey him. His treatise _Nasihat-ul-Muluk_ is an important work on the principles of government, compiled for the Seljuq Sultan Muhammad bin Malik Shah (1105-1118 A.D.). Ghazzali considers the existence of the ruler essential to make the people conform to divine commands and to live in peace and security. In the absence of a ruler, there would be continuous turmoil, disorder, a recurring state of famine and a set-back to all industries and crafts.[2] Thus Ghazzali tried to affirm the necessity of a ruler on religious as well as rational grounds.

The king, in the opinion of Ghazzali, is the shadow of God upon earth and obedience to him is obligatory on the people. God being the real sovereign, He confers authority on any one He chooses.[3] He also supports the view that administration of justice is the foundation-stone of kingship. The real Sultan, he thinks, is the one who not only enforces justice among his subjects but also desists from oppression himself. A tyrannical Sultan is a source of disaster and bound to perish,

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1. A great scholar, political philosopher, mystic, theologian and mentor of the Sultan, Imam Ghazzali was born and died in Tus in the north west Persia. Ibn Khalkan, II, pp. 621-22.

2. _Nasihat-ul-Muluk_, MS: Aligarh, University Supplement, No. 2, f. 26b.

3. _Nasihat-ul-Muluk_, ff. 26b-27a.

because authority can exist with unbelief but not with tyranny.[1]

Despite calling kingship a God-Gifted office, he does not consider the king independent of the limitations laid down by the religion. Emphasising the close relationship between state and religion he calls them twin-sisters. To him religion is the basis of human society and the ruler is its protector; hence if the foundation weakens the whole structure would fall down.[2]

Ibn Khaldun,[3] the great political philosopher and the distinguished scholar of the fourteenth century (1332-1382 A.D.), has also stressed the need of a ruler for human society; but has made clear that there is great distinction between the nature of caliphate and monarchy. He considers the transformation of the former into the latter an outcome of historical developments and changed circumstances. The monarchy in his opinion is based on force and oppression and guided by the pursuit of worldly

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1. *Ibid.*, ff. 27a-b.

2. *Ibid.*, ff. 33b-34a.

3. Born in Tunis, Ibn Khaldun died in Cairo after a long stormy career. He worked at different posts under the Muslim rulers of Granada, Tunis and Egypt. So he was very much close to the contemporary politics and was keen observer of the historical developments. (Introduction to *Muqaddama* (Arabic), pp. 2-6; *Encyclopaedia of Islam* (New edition), Vol. III, pp. 83-84).

interests. He thinks that anything which is based on opression and force would ultimately lead to tyranny and injustice.[1]

Ibn Khaldun states that the main aim of human life is the fulfilment of religious obligations which ensures success in the world hereafter. Therefore it is necessary to make people act in accordance with the dictates of religion for their well-being in this as well as the other world. The Prophet performed this function, and after his death by those persons who took his place (i.e. caliphs). Thus the calip is the successor of the Prophet in the task of protecting the religion and managing the worldly affairs of the community.[2]

Here it may be pointed out that Ibn Khaldun does not consider the caliphate to be based on reason that human beings need a social organisation and that they can not live peacefully without a ruler. Instead, he thinks the institution of the caliphate is required by the religious law itself.[3]

It is interesting to note that despite considering the caliphate and monarchy as contradictory to each other, Ibn Ibn Khaldun treats the transformation of the caliphate into

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1. Ibn Khaldun, _Muqaddama_, p. 158.

2. Ibn Khaldun, p. 159.

3. Ibn Khaldun, p. 160.

monarchy as an inevitable development, and thinks that these changes gradually crept into the working of the caliphate during the course of the rule of various dynasties.[1] Recognising monarchy as a historical reality, he goes further and tries to justify it with the argument that the Shari'at does not condemn the monarchy as such. It merely censures the evils resulting from it, such as tyranny, injustice and pleasure-seeking. If the monarch sincerely exercises his authority for the attainment of the objective of making men worship God, waging war against His enemies and of ensuring peace and order within the land, it would not be treated un-Islamic and condemned at all according to Ibn Khaldun.[2]

Not only the works of the writers on state-craft outside India reflected the problem of contradiction between theory and practice or the actual and ideal and their sincere effort to harmonise them, the conflict of and attempt to reconcile the historical forces, ideological factors and political realities are also visible in the writings of those historians or scholars of medieval India who expressed their opinions on the theory of state and art of government. Before examining their political thoughts a brief account may be given here of the political conditions prevailing in their own times.

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1. Ibid., pp. 173-74.
2. Ibid., pp. 160, 168-74.

The empire established by the early Muslim rulers in India is popularly known as the Delhi sultanate. Three elements - Islamic law, political traditions of the Sassanid Persia and the administrative organisations of their predecessors went a long way in moulding the policies of the Delhi Sultans. The political expediency and local conditions chiselled them according to the needs of time and various situations.

Professing the Islamic faith, the Delhi Sultans were political realist. They realised that in a country where the majority of population was non-Muslim, it was not expedient to govern the state entirely on the basis of the dictates of the _shariat_. Keeping in view the peculiar condition of the land, they, though Turks themselves, adopted the Sassanid theory of kingship and their organisation of various administrative departments to a great extent.[1]

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1. _Tarikh-i-Firuz Shahi_, pp. 25, 30-31, 142; K.A. Nizami, _Religion and Politics in India during the thirteenth century_, Delhi, 1974, pp. 92-94. The assimilation of Persian culture and traditions in Muslim polity may be traced back to the establishment of Abbasid caliphate. With the transfer of seat of the Caliphate from Damascus to Baghdad during the reign of Caliph Mansur (754-775) the Muslim rulers came into close contact with the Persians. At the outset they no doubt tried to resist, but ultimately could not escape the influence of their culture which brought a great change in their social and political outlook. (P.M. Sykes, _History of Persia_, 1915, pp. 61-67.

Believing in the kingship to be the vicegerency of God (*Niyabat-i-Khudawandi*) and the king to be shadow of God on earth (*Zillullah fil arz*),[1] the Sultans of Delhi had before them the Persian theory of divine right of kings.[2] Besides, the divine element has also been associated with the king in the Hindu theory of state where in the ruler was considered the incarnation of God.[3]

As far as the character of the Delhi sultanate was concerned, it was not a theocracy as some scholars would have us believe. The sultans of Delhi, being Muslims, were supposed to be bound by the *Shariat* law which was considered the real sovereign in the Islamic polity. But in actual practice their conduct of state was based on secular reason and political expediency. The laws by which the country was governed were the state-laws made by the sultan or the governing class. Though they were anxious to show their deep respect for religion, but in political sphere they did not always work under

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1. *Tarikh-i-Firuz Shahi*, pp. 34, 173, 175-76; *Tarikh-i-Fakhruddin Mubarakshah*, (ed. Sir E. Denison Ross) London, 1927, p. 13.

2. Ibn Asir, Vol. V., pp. 187-88.

3. *Manu*, Eng. tr. by G. Buhler, *the Laws of Manu*, in the Sacred Books of the East Series, 25th volume Delhi, 1964, VII, 3-12; Ghosal, U.N., *History of Hindu Political Theories*, Oxford, 1923, pp. 27-30, 181-83, 228-29.

its strict influence. The services of the '*ulema*' and theologians were utilised by the Sultans to win the public opinion, but they were not allowed to determine the policies of the government.[1] Appreciating the impact of religion and its institutions on the mind of medieval Muslims the sultans of Delhi, thought it essential to show allegience to the caliphs at Baghdad who was considered the only legal sovereign and symbol of unity of the Muslim world. Apart from feeling pride in styling themselves 'lieutenant' or 'helper of the caliph', they inscribed his name on the coins and had it recited in the sermon (*khutba*) at the time of Friday prayer.[2] Though such formalities did not add to their actual power or dignity, but it certainly served to impart a moral legitimacy and religious sanction to the temporal authority of the sultan in the eyes of their coreligionists.

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1. *Tarikh-i-Firuz Shahi*, p. 41.

∠ *Tarikh-i Firuz Shahi*.

2. Minhaj-us Siraj, *Tabaqat-i-Nasiri*, Kabul, 1964, p. 174; ∠ *Barani*, pp. 103, 491-92, 598; Arnold, pp. 87, 207; N. Wright, *Coinage and Metrology of the Sultans of Delhi*, Delhi, 1936, pp. 16, 38; Lane Pole, pp. 75-76. Mubarak Khalji was perhaps the first sultan who dared to shake off his allegiance to the Caliphate and refuse to recognise the legal superiority of any outside power (N. Wright, pp. 8, 43; Lane Pole, pp. 44-48); Muhammad bin Tughlaq in the early part of his reign had dropped all reference to the caliphate, but later on submitted to the legal superiority of the caliph of Egypt. He accepted robe of honour from him and reintroduced his name in the Friday sermon, ∠ pp. 491-92).

∠ *Tarikh-i-Firuz Shahi*,

With this background about the nature and structure of state erected by the Delhi Sultans we will discuss the ideas of some contemporary scholars who exerted to justify the above political set-up on the plea that it was essential for the protection of the faith and preservation of social order. In course of their discussion they tried to assimilate the conflicting norms and institutions into a workable and acceptable standard. Two such sincere attempts were made by Fakhr-i-Mudabbir and Ziauddin Barani in their works.

The deliberations of Fakhr-i-Mudabbir on the theory of kingship and code of conduct for king, wazir and officers are found in his works entitled '<u>Adab-ul harb u ash Shuja'at</u> and '<u>Adab-ul Muluk wa Kifayat-ul Mamluk</u>. Under the influence of the Persian traditions he declares the king to be the shadow of God on earth.[1] He considers obedience to him binding on religious ground and in support of his views he extensively quotes verses from the <u>Quran</u> and traditions of the Prophet.[2] While discussing qualifications of a king, he lays great emphasis on the virtues of truth, generosity, kindness and care for the welfare of people in general. Like earlier political thinkers, he also states the administration of justice and the protection of people against oppression as the main objectives

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1. <u>Adab-ul harb u ash Shuja'at</u> (Tehran edition), p. 243.
2. Ibid., pp. 5-6.

of kingship.[1]

The welfare of subjects being the chief duty of a king, he suggests to him several public works which would bring material prosperity to the people. For example the arrangement for safety on roads would help travellers, merchants and traders to move freely from one place to another and it would ultimately result in the progress of trade and prosperity of the country. In the same way, realisation of only lawful taxes would give impetus to agriculture and make the peasants prosperous. The prosperity of the peasants, he thinks, is the backbone of the state's economy and their ruin might cause desolation and disorder in the dominion. For this reason he strongly condemns illegal and forcible realisation of dues and taxes by the revenue officials.[2] It is interesting to note that Fakhr-i-Mudabbir, a theologian, was greatly impressed by the social and political developments in the Sassanid Persia. Apart from citing the Quranic verses and traditions of the Prophet he gives due place to the Sassanid traditions in his writings, and frequently draws conclusion on that basis.

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1. Adab-ul Muluk wa Kifayat-ul Mamluk, Rotograph No. 119 (MS: India Office, Ethe 2767), Research Library, Department of History (A.M.U. Aligarh), f. 32b.

2. Ibid., ff. 32b-33a.

Having studied the details of the state administration under the Delhi Sultans from very close quarters, Ziauddin Barani was greatly conscious of the sharp contradictions in the working of the Delhi sultanate and the Islamic ideals of state. His celebrated work on theory of state entitled the "*Fatawa-i Jahandari*" tries to find an explanation for it. The *Fatawa-i Jahandari*, a comprehensive code of political behaviour is actually a reflection of Barani's political thoughts in a coherent form which had been discussed by him in his earlier famous work known as the *Tarikh-i-Firuz Shahi*.[1] A perusal of Barani's discussion in the *Fatawa* leaves the impression that while propounding a theory of state in the context of contemporary politics he found himself in a strange dilemma. The established political norms and institutions of the period had little relationship to the Islamic political organisation; so an attempt had to be made to justify the system as it worked under the Muslim rulers.

Obviously monarchy and Islam are contradictory to each others. No conformity can be found between kingship and the political system based on the injunctions of the *Quran*, the precepts of the prophet and the traditions of the pious caliphs. On the one hand Barani fully appreciated this fact and declared

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1. For a detailed study about the nature and scope of the *Fatawa-i-Jahandari*. See Introduction to the *Political Theory of the Delhi Sultanate* by Muhammad Habib (Kitab Mahal, Allahabad), pp. i-xii & Afser Saleem Khan's Introduction to *Fatawa-i-Jahandari* (Lahore, 1972), pp. 1-53.

kingship to be in contrast to the Islamic ideal of state; on the other, he presented the oft-repeated argument (i.e. needs of a social order) for justification of the kingship. He thought that the primary needs of a man, as a member of society, demanded the maintenance of a centralised executive authority and that in the changed circumstances the institution of kingship could only ensure political stability and guarantee establishment of a social order based on justice.[1]

Accepting that the preservation of social order was the raison de'tre of monarchy, Barani considered the precepts of the pre-Muslim monarchs to be still valid and best suited to the Muslim rulers in India. Barani also thought the king to be vicegerent and shadow of God on earth.[2] But in principle he did not accept the Persian absolutism in toto.[3] Barani was against the imposition of king's self-will on the working of the state. Emphasising the significance of consultation on the basis of a Quranic verse,[4] he explained the need of a body of counsellors who would guide him by their advices in formulation of policies and administrative works. The selection of the

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1. Fatawa-i-Jahandari (ed. by Dr A. Salim Khan) Lahore, 1972, pp. 64-65, 126-28.

2. Ibid., pp. 232, 269.

3. In the words of Muhammad Habib "He in his heart longed, for an institutionalised monarchy" (Political Theory of the Delhi Sultanate (Introduction), p. vi.)

4. Quran, III : 159.

counsellors, according to Barani, was to be made by the king with utmost care. They should be adorned with the qualities of wisdom, sanity, foresight, aptitude of mind, knowledge of existing laws, loyalty to the king and have fear of God in their hearts. The counsellors were to be given full freedom to discuss matters put before them without knowing the opinion of the king on that particular matter. Barani considered the unanimity of opinion as a sign of its correctness and so he required the king to accept the advice based on it. In case of difference of opinion among the counsellors on any problem they should be given one more opportunity to discuss it, so that they may arrive at a consensus.[1] But to what extent the council could be effective in controlling self-will of the king is difficult to assume as it was an appointed body.

In Barani's opinion gentle birth is one of the essential qualifications for the members of governing class. He was of the opinion that the society could be divided in two classes, men of noble birth and of humble birth. Persons of the first category only were entitled to rule or govern. The

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1. Fatawa-i-Jahandari, 26-30, 32-33, 37. The type of the Council (Majlis-i-rai) suggested by Barani was not found working under the sultans of Delhi. Barani has referred to the Majlis-i-Khas of the Sultans, but it was very different in nature. Its advice was not always accepted and even its unanimous decision could be rescinded by the sultans.

nobility, according to him depended on the principle of birth, because sons of noble were alone noble.[1] Apparently what Barani meant by a noble family was a family the members of which had occupied high offices for long. According to Barani people were given aptitude for various arts, fine and coarse, since the beginning of the world. And the arts became hereditary. Those who had adopted nobler profession were only capable of virtue, and consequently they were noble, freeborn, virtuous, religious, of high pedigree and pure birth. Though Barani's theory of distinction on the basis of high-born and low-born did not conform to the Islamic democratic principles, but it reflected the spirit of the age. The concept of class distinction - the most distinctive feature of Indian society was in theory rejected by the Muslim rulers, but in practice they could not escape its effect altogether. The general policy of the government in those days was to confer important posts on the members of upper strata of society.[2] When the government passed from the Turks into the hands of the Khaljis Barani was surprised for it was anomalous to him that kingship and government should belong to any people other than Turks.[3]

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1. Fatawa-i-Jahandari, pp. 295-98, 317-20.
2. Tarikh-i-Firuz Shahi, pp. 29-30, 37-39.
3. Ibid., pp. 173, 175-76.

Whether the concept of class distinction had been actually a part of state policy of the sultans or it was Barani's personal view[1] which he put into the mouth of political dignitories, such ideas never found popular acceptance in the Muslim society.[2] No other scholar, contemporary or semi-contemporary even those later historians whose main source of information about the sultanate was Barani have given this concept of state based on the principle of high-born and low-born.

Barani was of the view that a state based on experience and secular reasons, should be governed by Zawabit (State-Laws) made by the king. He thought that a state established by the Muslims on monarchical line could not be governed by the laws of the Shariat.[3] In support of his view he argued that social and political conditions had undergone great changes and new circumstances required new laws formulated keeping in view demands of the times.[4] Besides, in his opinion the shariat had no

1. Barani explained the principle of birth in two ways, sometimes directly expressing it as his considered opinion and sometimes indirectly putting it in the mouth of well-known historical figures or kings.

2. Cf. K.A. Nizami, Religion and Politics in India during the thirteenth century, pp. 109-10.

3. Most probably it was Barani's own idea which he ascribed to Alauddin Khalji that "the polity and government are one thing and the rules and decrees of the shariat another. The government is meant for the king and rules of the shariat relate to the qazis and muftis (Tarikh-i-firuz Shahi, p. 287).

4. Fatawa-i-Jahandari, pp. 128, 139-41.

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explicit ruling on all political matters. He assumed that there were no laws relating to punishment for political offences, and that the problems of treason and rebellion were not discussed in the Islamic jurisprudence which was codified during the Abbasid period.[1] So there always existed scope for laying down new rules out of political expediency.[2] As regard the problem of making new laws in time of necessity, Barani was of the opinion that it should be done with great care, taking into consideration every aspect of the matter. According to him the king was not free to deal with this problem alone; he was required to seek advice of the wise, discerning and experienced counsellors.[3] But Barani did not favour the disregard of shariat altogether in the formulation of new laws. To him the foremost condition in formulating new laws was that it should neither interfere and negate the orders of the shariat, nor lead to the degradation of religious matters. Further, he advised the king to seek the precedents for their zawabit in the laws of religious rulers.[4] But he admitted that if the enforcement of certain laws against the shariat became essential

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1. Fatawa-i-Jahandari, pp. 217-19.
2. Ibid., pp. 200-201.
3. Ibid., 26, 217, 220.
4. Ibid., pp. 219-20.

due to some expediency, it might be done by the king considering it illegal and wrong. To atone for it the king should give plenty of charity and be conscious of this sin.[1]

On the basis of the above discussion it may be concluded that historical necessity and political expediency were the important factors which, to Barani, deserve full consideration in the conduct of the state affairs. His Fatawa-i Jahandari is a sincere effort to harmonise the 'actual' situation with the ideal concept of government by developing the thesis that political necessity renders permissible the things otherwise prohibited, provided the aim is pure and pious. In other words, the practices and institutions not sanctioned by the shariat are admitted by the author as permissible means for accomplishment of the noble objective - the defence of religion and maintenance of social order.

With the advent of the Mughals in India the political situation of the country took a new turn. The principles evolved by them for conduct of the state were different from what the Delhi Sultans had developed. Being Muslims and believing in the supremacy of the shariat Law, the Mughal emperors had been influenced by both the Turko-Mongol and Timurid traditions of

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1. Ibid., p. 220. Enforcement of such laws, according to Barani, would come under legal proverb, "Necessities make forbidden things lawful."

kingship. So their theory of state came to be designated as Turko-Mongol theory of kingship. In fact the Mughal theory was a synthesis of three kinds of traditions - the Turko-Mongol, the Muslim and the Indian. This is borne out by a careful study of Abul Fazl's A'in-i Akbari which was the first sincere effort made during the Mughal period to put the official theory of state in a coherent form. Before examining Abul Fazl's view it would be appropriate to have a brief discussion on the Turko-Mongol theory of kingship.

The Turko-Mongol theory was based on the ideas and precedents left by Timur the Turk, and Changez Khan the Mongol. The king, in the Mongol tradition was considered something higher than simply a ruler. The Mongols believed in the semi-divine origin of the family of Changez Khan. It was the popular belief that he was the 'son of light'. The Great Khan, the Mongol ruler was purely a political and military leader with no religious obligations binding on him. Changez Khan, combined in himself the glory of divine descent, and the majesty of imperial power obtained from great successes in the military operations. He left behind in legacy such a deep rooted prestige for the Great Khan that a mighty ruler like Timur thought it better not to challenge the superiority of his house. He was content to exercise power in the name of the descendant of Changez Khan and assumed no greater title than 'Amir' or

'Mirza'.[1]

Though bred in the Islamic traditions, Timur could not but be influenced by the Mongol institutions. Like the latter he also believed in the divine origin of sovereignty as well as in the undivided authority of the sovereign. He believed himself to be the vicegerent of God. He is reported to have stated, "Since God is one, and has no partner, therefore His vicegerent on earth must be one"[2] The king's authority in the Timurid polity was not subject to the sanction of any outside power. Timur did not feel the need to recognise the legal superiority of the caliph.

The Turko-Mongol theory of kingship and Islamic traditions gradually mingled and the Mughal emperors adopted the synthesis. Babur, the founder of Mughal rule in India, felt proud of his ancestory and considered it the inherent right of the Timurids to rule.[3] The title of 'Padshah' adopted by Babur for

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1. It was only with the accession of Abu Shaid Mirza, the grandson of Timur, that this tradition was broken. He is reported to have asserted that he was king in his own right. He further dared to disregard the ultimate, though nominal authority of the Mongol ruler Yunus Khan (Tarikh-i-Rashidi, pp. 83-84; Akbar Nama, I, pp. 77-78).

2. S.A. Yazdi, Zafar Nama, Calcutta, 1887, Vol. I, p. 308.

3. Babur Nama (Eng. tr. A.S. Beveridge) London, 1921, I, p. 274; II, p. 482; Tarikh-i-Rashidi, p. 389.

the first time in India in lieu of Sultan marked a clear change from the conventions of the Delhi Sultans.[1]

Babur was probably influenced by the Timurid belief that kingship was indivisible. He is reported to have said, "partnership in rule is a thing unheared of".[2] Humayun believed that just as the sun was the centre of universe, the king was the centre of the human world.[3] As for the divine origin of sovereignty, we do not get any clear reference in the sources that Babur believed in it, but the chronicles of Humayun's reign ascribe such belief to Humayun. Khwand Mir, the official historian considered that the Padshah was the embodiment of the spiritual and temporal sovereignty (Jami' Sultani Haqiqi wa Majazi).[4] He also stated that the king was inspired by God and that his institutions were the result of that inspiration.[5]

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1. Babur had originally assumed the title of Padshah in 1507 after he had established his kingdom at Kabul (Babur Nama, I, p. 344). It was done apparently in view of the fact that the Mongol Khan had been overshadowed by the dazzling success of the Uzbeg leader Shaibani Khan, and the rulers of neighbouring countries like Persia and Trans-Oxiana had also adopted the high sounding titles like, Shah, Sultan and Qaiser. To show his greatness, Babur preferred to adopt 'Padshah'. This was left by him as legacy and became a popular title among all Mughal emperors and the title of Sultan became synonymous for a subordinate ruler who accepted the Mughal suzerainty. (For a detailed definition of 'Padshah' see Ain, I, p. 3).
2. Babur Nama, I, p. 293.
3. Khwand Mir, Humayun Nama, Calcutta, 1940, pp. 12, 19-20.
4. Ibid., p. 20.
5. Humayun Nama, pp. 12-13.

By the time the Mughals established their rule in India even the nominal caliph of Egypt had no existence, but the Ottoman Sultan who had adopted the title of Khalifa in 1517 was then regarded as the highest legal sovereign in the Muslim world.[1]

Following the Timurid neither Babur nor Humayun felt any necessity of recognising the legal superiority of any outside power or call of himself a 'lieutenant' or 'deputy of the Caliph' living or dead. Far from recognising the legal superiority of the Ottoman ruler, they regarded him inferior to themselves. But they showed due regards to the first four caliphs (Khulafa-i Rashidin) and retained the practice of reciting their names in the Khutba and inscribing them on the coins.

These were the ideas and traditions of kingship which Akbar had inherited on his accession. The Mughal theory of kingship did not get a definite shape during the reign of Babur and Humayun. It was only during Akbar's rule that the concept of state and the theory of kingship crystalized by Abul Fazl, keeping in view the historical realities and the policies and practices of the contemporary emperor. Written in the last decade of the 16th century, the Ain-i Akbari is considered the most important source of information about the political concepts of the Mughals and their organisation of government.

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1. Arnold, pp. 182-84.

Like some early Muslim writers, Abul Fazl also deemed the kingship essential for the protection of the people from oppression and injustice and for the establishment of an orderly society. He thought that in the absence of monarchy the mankind could not get justice and enjoy prosperity.[1] Abul Fazl's justification for kingship is also stereotyped. In his words, "if royalty did not exist, the storm of strife would never subside, nor selfish ambition disappear. Mankind, being under burden of lawlessness and lust would sink into the pit of destruction, the world would lose its prosperity and the whole earth would become a barren waste."[2]

The concept of divine origin of kingship, as we have shown earlier, had entered into the Indo-Muslim polity long before Abul Fazl enunciated his theory. Abul Fazl's contribution seems to have been the synthesisation of earlier Turkish and Timurid ideals. He states, "royalty is a light emanating from God, a ray from the sun, the illuminator of the universe, the argument of the book of perfection, the receptacle

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1. Not only in the works of Muslim theologian and scholars the justification for kingship were highlighted but the same views were also emphasised in the religious and legal works of Hindus, (Manu, VII, pp. 3, 4-12).

2. Ain-i Akbari, Lucknow, 1882, I, p. 3.

of all virtues."[1]

Abul Fazl explained kingship in terms of divine light (farr-i-izidi) which was communicated to kings without assistance from any intermediate element.[2] To put the same idea in a more explicit term Abul Fazl stated kingship to be an emblem of the power of God.[3] Thus Abul Fazl's concept of divine origin of kingship was clear and substantial and on that basis he considered the king's authority unchallengeable and thought obedience to him binding upon the people.[4]

As regard the essentials of kingship Abul Fazl neither supported Barani's theory of racial superiority and gentle birth nor accepted the Turko-Mongol tradition of hereditary right to kingship. He believed that kingship was gifted to a person who had been endowed with many thousands of qualities.[5] His discussion on this matter leaves us in no doubt that these qualities were inherent in the nature of person receiving the divine light. The essential qualities for a king

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1. Ain, , p. 3. Abul Fazl makes us believe that Akbar himself called the king 'shadow of God'. He is reported to have pronounced', "We by virtue of our being the shadow of God, receive little and give much." (Akbar Nama, III, pp. 97, 659-60).

2. Ain, I, p. 3.

3. Ain , , p. 167.

4. Ain, I, pp. 19, 105, 107.

5. Ain, I, p. 3. Akbar Nama, II, 285.

were as encompassing as the office of king was higher in dignity. These qualities according to Abul Fazl are sublime intelligence, great affection for the people, generosity, liberality, impartial justice, toleration, devotion to and an ever increasing trust in God.[1] A person, though adorned with the above qualities, in Abul Fazl's opinion, could not be worthy of the exalted office if he did not uphold the principle of Sulh-i kul.[2] The term Sulh-i kul signified that the king should equally treat the entire humanity without any consideration of religion or sect. This aspect of the theory makes it revolutionary in character as it gives new orientation to the political outlook, for it lays great emphasis on impartial treatment, freedom of worship and equal favour to all classes of men and followers of all religions. In his view an ideal king should be above religious differences, catholic and tolerant. His outlook should not be parochial and narrow. Considering Akbar as his ideal king he quotes his letter written to Shah Abbas of Persia which expressed his firm belief in that principle. The letter reads "the sections of mankind, who are a divine deposit and treasure must be regarded with the glance of affection and effort must be made to conciliate their heart. It must be considered that the Divine mercy attaches itself to

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1. Ain, I, p. 3; Akbar Nama, II, p. 285; III, pt. I, pp. 452-53, pt. 2, p. 66.

2. Akbar Nama, II, p. 285; III, pt. 2, p. 657.

every form of creed and supreme exertions must be made to bring oneself into the ever vernal flower gardens of peace with all."[1]

Reason has been suggested by Abul Fazl as the most suitable guide for a king in dealing with the state affairs. He was required to adopt the rational attitude and to avoid taqlid.[2] This does not mean to signify that Abul Fazl thought the king was above the religious law or he advised him to ignore religion. Adherence to reason or persuance of enquiry does not mean disbelief in the supremacy of the religious law. The Mahzar of 1579, issued at the instance of Akbar, did not place him above the shariat law. It only emphasised the right of the ruler to choose any one from amongst the divergent opinions of the jurists on a controversial matter and authorised him to issue ordinances for the well being of the subjects which were not in contravention to the explicit text of the Quran or Hadis.[3]

It is apparent from the above discussion that Abul Fazl's theory of kingship was a synthesis of three streams of thought-Turko-Mongol, Muslim and Indian. It was more broad-based and of universal character than the theory propounded in

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1. Akbar Nama, III, pt. 2, pp. 559-60; 765-7. In Abul Fazl's opinion Akbar was adorned with all the requisite qualities of an ideal king. In the same context one may see Abul Fazl's glorification of Akbar with the title of "Insan-e-Kamil" (The perfect man). Akbar Nama, I, p. 115.
2. Ain, I, pp. 195-97; Akbar Nama, III, pt. I, pp. 452-53.
3. Nizamuddin Ahmad Bakhshi, Tabaqat-i-Akbari, Calcutta, 1931, II, pp. 345-46; Muntakhab-ul Tawarikh, II, pp. 271-72.

the pre-Mughal period. Free from any limitation of racial superiority or consideration for noble lineage, the state in Abul Fazl's view was to be founded on the principle of equality and toleration for all faiths.[1]

It may be concluded on the basis of above study of the theory of state as evolved by Muslim thinkers, jurists and historians that their ideas were mostly the result of the conditions and situations in which they lived and were sometimes based on the policies and practices of their contemporary rulers. Historical necessity and political expediency served for them as governing considerations. Since early political thinkers had formulated their theories after the virtual transformation of caliphate into monarchy, so it was quite natural for them to justify the institution of monarchy and to harmonise it with the system of government based on the principles laid down by the Quran and Hadis and the practices of the pious caliphs. Afterwards, it became a fashion for the Muslim writers on political institutions and administration to put forward the same justification for kingship and to adjust their ideas to the political realities. An analysis of their ideas in the light of the existing political environment around them would determine the extent of influence of the contemporary politics on their

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1. When Abul Fazl wrote his works more than four hundred years had passed to Muslim rule in India and he could very well afford to present a theory based on universal toleration. Akbar had the experiments made by his predecessors to guide him.

thinking. A modern writer is true in his observation, "what factual history imposed upon human system, political theory endorsed it by expounding the compromise formula.[1]

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1. Introduction to *Fatawa-i-Jahandari* (ed. by Dr A. Salim Khan) p. 89.

Chapter II

THE PENAL LAW

The Islamic Penal law classifies offences under two broad categories - those which are against God or public rights and those which violate private rights.[1] The violation of public or private rights is punishable in three ways, viz. hadd, qisas and tazir.

Hadd (plural : hudud) literally means boundary, limit or barrier. In legal terminology it signifies the limit (of law) laid down by God, and so in reference to penal law it came to be known as the punishment the exact limit of which has been fixed by the Quran or hadis. The hadd is considered a right or claim of God (haqq-ullah) and it can neither be changed nor remitted by the ruler or any judicial authority.[2] It is applicable in the following offences concerning the public rights.

(1) Adultery (Zina)
(2) The false accusation of adultery (Qazf)
(3) Drinking wine (Shurb-ul Khamar)
(4) Theft (Sarqa)
(5) Highway robbery (Qata-ut tariq)

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1. Burhanuddin al-Marghinani, al-Hidaya, Matba-i Yusufi, Lucknow, 1325AH, II, p. 486; Fath-ul Qadir, Cairo, 1316, A.H. IV, p. 112; Ibn Taimiya, al-Siyasat-ush-Shariyah, Cairo, 1322 AH, pp.29-20,68-69. Since in Islam the State belongs to God, the violation of public rights is treated as an offence against God and the infringement of private rights as an offence mainly against the individual concerned.

2. Hidaya, II, pp. 485-86; Mawardi, pp. 194-95.

(6) Apostasy (*Irtidad*)

Qisas (retaliation) - It is of two kinds: *Qisas fi'n-nafs* (blood-retaliation) which is applied in cases of killing. The other is known as *Qisas fi-ma dun an-nafs* and applied to cases of wounding which do not prove to be fatal.[1] In case the next of kin (*wali-ud dam*) agreed to accept blood-money (*diyat*) or pardonned him unconditionally, the offence could be compounded and no further cognizance of it could be taken by anyone.[2] Here it differs from the *hadd* punishment which cannot be changed or compounded once it became applicable to any one.

Tazir - It literally means 'to censure' or repel'. This is a kind of reformative punishment and is applied to those crimes for which no fixed punishment has been laid down in the *Quran*.[3]

Now we will discuss the various offences and the punishments prescribed for them by the *Shariát* and the conditions in which they were applicable. Then we will see how far in the available cases, the Mughals followed the *Shariát* law and took care of the conditions laid down for its application.

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1. *Hidaya*, II, pp. 546-47, 553-54; Abu Bakr bin Ali al-Jassas, *Ahkam-ul-Quran*, Cairo, 1347 A.H. Vol. I, p. 155.

2. *Hidaya*, IV, pp. 544-48.

3. Mawardi, p. 205.

I. <u>Hudud</u>

(1) Adultery (*Zina*). According to the Islamic law the liability to the punishment for this crime is established either by confession of the offender or by witness of four reliable persons. The punishment will be inflicted only if the confession was repeated four times in four separate meetings. It may lapse if a man retracted his own confession before the punishment is given. In case of establishing the crime by witness, at least four reliable and competent witnesses are required to declare in clear terms that they witnessed the parties concerned in the very act of committing adultery.[1]

An adulterer is to be stoned to death if he is a *muhsin*;[2] otherwise he is to be flogged with a hundred lashes.[3]

The royal orders and imperial edicts of the early Mughal period are silent about the punishment for those who were

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1. *Hidaya*, II, pp. 486-87.

2. The word *muhsin* is generally explained as a married person which is misleading. The *muhsin* as a technical term is defined in the Islamic law as a person who is free, sane, major, lawfully married and who has kept marital relation with his wife in a legal way (*Hidaya*, II, p. 490).

3. *Hidaya*, II, p. 488. If the offence is committed by a slave the penalty is reduced to half.

charged with the adultery. Probably as the Shariat law was being followed in this connection, and qazi was administering it, so no need was felt to emphasise the fact. The 28th clause of Aurangzeb's penal code states that the cases of adultery should be decided by the qazi in accordance with the shari'at.[1] As regards the actual cases of adultery brought to the notice of authorities only few references are available in the contemporary sources.[2] They, however, help us to have an idea about the nature of punishment given to the adulterer in the Mughal India.

Only three cases of this kind are reported from Akbar's reign. In two cases the culprits were punished with death sentence. In one case, the offender was subjected to castration. In 1589 while Akbar was in Kabul encamping at Safed Sang in the vicinity of the city it was reported to him that a base fellow had dishonoured a peasant's daughter. The

1. Ali Muhammad Khan, Mirat-i Ahmadi, Calcutta, 1928, I, p. 282. Monserrate informs us about the reign of Akbar that those who were guilty of such unnatural crimes were punished by savage scourging and leather thongs (Monserrate, Antony, Commentary, (Eng. tr. J.S. Hoyland and S.N. Banerjee) London, 1922, pp. 209-10.

2. The conduct of such cases was the responsibility of the Qazi. If the court proceedings of the period were available we would have been more in a position to know about the matter. Then, conditions laid down for establishing this offence were so hard that it would have been difficult to find sufficient witnesses.

Emperor awarded capital punishment to the culprit.[1] In 1582 Jalal was accused of adultery. An enquiry was undertaken at the imperial order. The offence was proved and he was strangulated.[2] In 42nd year of Akbar's reign Hafiz Qasim was castrated by the imperial order for violating the chastity of a woman.[3]

Sir Thomas Roe records that in the reign of Jehangir a woman and an eunuch were found guilty of committing adultery in the royal palace. A person who loved that woman killed the eunuch. The murderer was condemned to be trampled under the feet of an elephant. The woman was buried up to the armpit in earth, her feet tied to a stake. She was kept in the same condition for three days and two nights. Her bare head and arms were completely exposed to the sun. It was decided that she, if survived, was to be

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1. Akbar Nama, III, p. 569. It is not clear in what way he was punished. An interesting case is recorded about the reign of Mahmud Shah Bahmani I (1379-1397). A woman convicted of adultery was brought to the court of the qazi for trial. He asked her how she came to be guilty of so heinous crime. She replied that she was unaware of its illegality and thought that as one man may have four wives, the woman was also allowed to have four husbands. She further told that she repented and will not repeat the crime. The qazi exempted her from punishment and set her free. Muhammad Qasim Hindu Shah Farishta, Tarikh-i Farishta, Naval Kishore, Lucknow, 1864, I, p. 303.
2. ~~Ibid.,~~ Akbar Nama, III, pp. 390-91; Monserrate, p. 210.
3. ~~Ibid.,~~ Akbar Nama, III, p. 573.

pardoned.[1] Izzat Khan, governor of Sindh was punished during the reign of Aurangzeb for the same crime with dismissal from his office and resumption of all ranks.[2] None of the above punishments awarded to the adulterers were in accordance with the *shariat*.

Besides, there are some other cases in which the adulterers were unofficially punished in one way or other, but no reaction of the state is recorded upon these punishments. It is related about the reign of Shah Jahan that a scrivener found his sister and Didar Khan (one of the principal eunuchs of Shah Jahan) closeted together. He stabbed Didar Khan and put his sister to death.[3] Another case of the same period is that of a rich Muslim merchant who found his wife in bed with another person. He killed her along with a child of three. The lover probably had made good his escape.[4]

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1. *The Embassy of Sir Thomas Roe to the Court of Emperor Jahangir*, (ed. W. Foster) London, 1926, pp. 190-91. No account of this case is found in the Persian sources.

2. Niccolao Manucci, *Storia do Mogor* (Eng. tr. W. Irvine), Calcutta, 1966, II, pp. 204-6.

3. Francois Bernier, *Travels in the Mogul Empire*, (Eng. tr. A. Constable) New Delhi, 1968, p. 131.

4. John Fryer, *A New Account of East India and Persia*, (ed. W. Crooke) London, 1909, I, p. 245.

(2) False accusation of adultery (qazf) : If any person explicitly[1] accused a muhsin (whether man or woman) of adultery and failed to present four reliable witnesses he is liable to be punished with eighty lashes.[2]

As regards the application of this law during the Mughal period it is difficult to arrive at any conclusion, because we could get only one case from the contemporary sources which mentions the punishment under this offence. We are informed by Manucci that in the reign of Aurengzeb a woman, who had falsely accused a Rajput, was severely punished.[3] It is not clear what kind of punishment she was subjected to. However, the woman in the above case was not liable to hadd punishment as one of the conditions for the application of the punishment is that the accused should be a Muslim.

(3) Drinking wine (Shurb-ul Khamar): This is also a crime for which punishment has been fixed by the shariat. In case a Muslim takes liquor and is caught while his breath yet smells of wine, or is brought before the qazi in the state of

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1. In case of a woman, impugning the legitimacy of her child also amounts to explicit accusation.

2. Qur'an, IV 24; Hidaya, II, pp. 508-9. The hadd punishment under this offence would become enforcible after the accused has demanded it as it involves his individual right.

3. N. Manucci, Storia do Mogor, Calcutta, 1965, I, p. 175.

intoxication, and two witnesses testify to his having taken wine, he is to be punished with eighty lashes in case he is a free man; the punishment will be reduced to forty lashes if the accused happens to be a slave. The offence is also established if the offender himself confesses his guilt.[1]

In Mughal India a number of royal ordinances were issued proclaiming official prohibition of drinking, but they did not prescribe any particular punishment for those who violated the prohibition. An ordinance issued by Akbar in 1593 exempted from punishment those persons who took wine on medical advice. But it was laid down that severe punishment would be given to those who indulged in excessive drinking.[2] The duties of the Kotwal as stated by the Ain included to prevent people from making, selling and purchasing wine,[3] but

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1. Hidaya, II, pp. 505-6. A man is not to be punished if he smelled of wine and did not confess his guilt or two witnesses did not give evidence. If a man confesses his guilt or two witnesses give the evidence after the smell of wine is extinct from his mouth, he is not liable to hadd according to Abu Hanifa and Abu Yusuf. Imam Muhammad thinks that he is still liable to the prescribed punishment.

2. Badauni, II, pp. 301-2. In order to prevent from taking advantage of this exemption, Akbar had ordered a wine shop to be opened near the palace to supply wine at prescribed rate for those who needed it as the remedy for some illness. The needy were required to put the names of their father and grand-father in the register of the mushrif (head-clerk of revenue department).

3. 'Ain, I, p. 198. Referring to the reign of Akbar, Mirat (I, p. 169) states that the governors were ordered to give exemplary punishment to distiller, seller and drinker of wine.

there is no mention of what steps he was required to take against its users. Admitting his own indulgence in drinking, Jahangir in the very first year of his reign issued ordinance prohibiting manufacture, sale and use of wine and all other kind of intoxicating liquor.[1] In 1609, Jahangir put a ban on the sale of bhang and buza (which were also intoxicating items) in the market.[2]

Shahjahan also prohibited wine drinking in private or public, but allowed the Christians to manufacture wine for their own use.[3] It was in the reign of Aurangzeb that elaborate rules were formulated against the manufacture, use and sale of wine and certain administrative steps were also taken to strictly enforce the prohibition. He not only prohibited the use of wine but also that of other intoxicants like bhang, toddy and opium.[4]

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1. Tuzuk, pp. 4, 9; Mir'at, I, p. 185.
2. Tuzuk, p. 78.
3. Lahori, II, pp. 617-18; Manucci, I, pp. 282-83.
4. Mir'at, I, pp. 247, 251. Aurangzeb is reported to have severely rebuked his grandson 'Azimuddin (governor of Bengal) who had created a centre for manufacturing and selling of toddy in some part of the province. The Emperor had told him that though it was a source of income for the state, it was not in the greater interest of the state and the people. He questioned the authority of the jurist-consult who gave decision in favour of selling and drinking

(footnote continued .....)

To make the prohibition effective, Aurangzeb at first ordered the closure of wine shops in general. He directed the *Kotwal* to make a search for wine sellers among both the Muslims and Hindus and punish them. Besides, the *muhtasibs* (the chief censure) with a large body of subordinates were required to prevent the use of wine, through imparting moral teachings and if necessary they could also use force; they were also allowed to destroy the pots and pans which were used for beverages and liquor.[1] The permission given to the Christians for manufacturing wine for their own use was retained, but they were not allowed to do so in the vicinity of the city. They were ordered, with the exception of physicians and surgeons, to migrate from the imperial capital and settle at a distance of one league from the city. Though they were allowed to prepare and drink wine, but they were prevented from selling it. Special guards were appointed to keep a watch on the Christians so that they could not abuse the privileges granted to them with regard to the manufacture and consumption of wine.[2]

(Previous footnote continued)

toddy. (*Ruq'at-i 'Alamgiri*, Kanpur, 1924 (letter No. 90) p. 24. But use of wine on medical ground was permissible during Aurangzeb's reign is evident from Manucci's description that Shah Alam's sons were habitual drunkards. Once he (Manucci) sent a bottle of wine to Sultan Muizuddin. A spy reported the whole affairs to Aurangzeb. The Prince escaped the royal wrath on the plea that the wine was to be given as a medicine to a sick lady (Manucci, II, pp. 368-69). It implies that the drinking was permissible on medical ground.

1. Khafi Khan, II, p. 8; *Alamgir Nama*, pp. 391-92; *Waqai-i Ajmer*, Transcript (MS. Asfia Library, Hyderabad, 2242), Research Library, ~~(MS. Asfia No. 15 (Research Library, Hyderabad, 2242.)~~ ~~Library~~ Dept. of History, AMU., Aligarh) I, p. 183; Manucci, II, pp. 4-5.
2. Manucci, II, pp. 3-4.

While providing much details about rules and regulations forbidding the use of wine, the contemporary sources do not give much information about the punishment prescribed for those who violated the prohibition. Regarding the users of wine Aurangzeb's penal code merely states that their cases were to be decided by the qazi according to the shariat.[1] But it deals in detail with the kind of punishment to be given to the manufacturers and sellers of wine, bhang and buza.[2] Manucci (who has supplied a lot of information about wine drinking) is also silent about the kind of punishment prescribed for drunkards, though he tells us about the punishment given to the sellers of wine such as imprisonments, beating and imposition of fine or severing one hand one foot.[3] There are, however, some cases recorded in the sources which give an idea of the actual punishment inflicted on the drunkards during the Mughal India.

Nine cases of punishment for wine drinking have come to our notice from period with which we are concerned. Most of these cases are related to the state officials and

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1. Mir'at, I, p. 282.

2. Ibid., I, p. 181.

3. Manucci, II, pp. 3-4. We are informed by John Fryer (I, p. 244) that wine-sellers were generally punished with whipping.

in none of these cases punishment was given according to the *sheriat*.

In the first case recorded from Akbar's reign, the drunkard was subjected to public exposure (*Tashhir*) and imprisonment. Lashkar Khan, *mir bakhshi*, entered the court in a state of inebriety and acted improperly. On being informed the Emperor ordered that Lashkar Khan be tied to the tail of a horse, and paraded through the streets, and he was to be put in prison afterwards.[1] It was reported to Aurangzeb by Mukhtar Khan, the governor of Khandesh that Ziauddin and Muhammad Husain had been dismissed from their posts as a punishment for wine drinking. Ziauddin expressed repentance before Qazi Muhammad Salih, Some courtiers approached the Emperor with his letter of repentance and requested him to pardon Ziauddin and re-instate him. But their request was not granted.[2] In 1688 Aurangzeb was informed by newswriter of Aurangabad that Khwaja Muhammad, *darogha-i bayutat* was a habitual drinker

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1. *Akbar Nama*, II, p. 364; Shah Nawaz Khan *Maasir-ul Umara*, Calcutta, 1891, III, p. 161. According to the latter source, he was released after some times.

2. *Selected Documents of Aurangzeb's Reign*, (ed. Yusuf Husain) Hyderabad, 1958, p. 106.

and used to indulge in improper activities. A royal order was issued to the governor that either his rank should be reduced or he should be dismissed and sent to the court.[1]

In 1699 it was reported to Aurangzeb from Burhanpur that Abdul Karim Khan used to oppress the people in the state of drunkenness. His rank was reduced from 900/900 to 400/200.[2] Shaikh Nur-ul Haq, _muhtasib_, reported to the Emperor in 1701 that he, in accordance with the royal order, had destroyed the wine manufacturing dens of 'Abdul Khan and Qarawal Khan, and that Allah Yar Beg, the nephew of the former was resisting his punitive measures. An order was sent for demotion in his rank.[3]

Muhammad Azam complained to Emperor Aurangzeb against the drinking habit of Sayyed Lal who was a hereditary servant of the Mughals (_Khanazad_). He suggested to the Emperor to resume his _jagir_ so that this evil may be put down. The Emperor rejected his suggestion and wrote back to him that it was the duty of the _muhtasib_ to take action in such offences. Further, the Emperor directed the _Sadr-us Sudur_ to enquire into the matter and submit a detailed report about the

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1. _Selected Documents of Aurangzeb's Reign_, p. 162.
2. _Akhbarat_, (M.F. No. 259) 43rd R.Y. f. 14.
3. Ibid., 45th R.Y. f. 99.

actual situation to him.[1] Aurangzeb was enraged to know that Hidayat Kesh-i Punjabi, a reporter, had gone to the tomb of Shah Gesu Daraz in a drunken state. He was ordered to be put in chains and presented before him.[2] It is not confirmed as to what action was taken by the Emperor against the reporter. Nur-ul-Haq, muhtasib, brought to the notice of the Emperor that wine drinking, gambling and other immoral practices were going on in the territories of Nakuji Bargi, Raja Udat Singh, Khwaja Khan and Inder Singh. The muhtasib wanted that some action should be taken against them. They were simply admonished and advised to abstain from such activities.[3] From the letter of Muhammad Azam, the news-writer of Gujarat, Aurangzeb learnt that Muhammad Amin Khan, the governor of the province, had held court while he was in a state of intoxication. The governor was informed of this matter by his agent. As the report was wrong the governor ordered the moustaches and beard of the news-writer to be pulled out and flung into the air in the open court. The emperor came to know of this and commented that the Khan had a very violent temper and had overstepped the limits of his authority, because it was not up to him to punish the news-

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1. Ahkam-i 'Alamgiri, 18/27-28.

2. Ruqaat, (Letter No. 20) p. 71.

3. Akhbarat, 44th R.Y. f. 104.

reporter. As for the punishment to the news-writer and governor, the emperor dismissed the former for supplying wrong information and deprived the latter of the robe of honour at the annual festival of coronation for misusing his authority.[1]

An analysis of the above cases makes it clear that: (a) the punishments awarded in the above cases for drinking wine did not conform to that prescribed by the *shariat*. (b) There was no uniformity in the penal measures applied in various cases. (c) During the major part of the period concerned wine and intoxicants were forbidden by royal edicts which were applicable to all the subjects - Muslims and non-Muslims alike. The Christians were, however, granted exemption as a special consideration to them.[2] Thus we can say that the matters relating to wine drinking were governed by the state-laws.

(4) Theft (*Sarqa*) : In the Islamic law theft and highway robbery (*qata-ut-tariq*) are considered two distinct crimes and therefore different punishments are prescribed for them.

The term *sarqa* has been defined as 'secretly taking away something from the lawful custody amounting at least to

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1. *Ahkam-i 'Alamgiri*, 61/73.
2. J.B. Tavernier, *Travels in India*, (Eng. tr. V. Ball. Rev. W. Crooke) London, 1889, II, pp. 249-50; Bernier, pp. 252-53; Manucci, I, p. 95; II, p. 4.

the value of ten *dirhams* (*nisab*) by a person having no ownership right in that thing.[1] The rules set forth in the Islamic law for establishing the theft and its punishment are as follows:

(i) The charge of theft is established on the testimony of two witnesses or on the confession of the thief himself.[2]

(ii) If the crime is committed by a major and sane person, the rules provide that his right hand would be amputated.[3] If he commits the crime for the second time, he has to lose his left foot.[4] If he repeats the crime for a third time he would be punished with perpetual imprisonment until he shows repentence.[5] There is no amputation for stealing the property of one's father, mother, son, brother, wife or of any other close relation of a prohibited degree (*mahram*).

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1. *Hidaya*, II, pp. 515-16. In the definition of theft the stipulation of 'taking' implies that the object must have been removed from the *hirz* (custody); a thief who is caught within the *hirz* (e.g. within the house) is therefore not subject to *hadd*. According to some jurists the *hadd* could not be applied to a thief who hands over the stolen object to an accomplice outside from inside the *hirz* (Ibid).
2. *Hidaya*, II, pp. 516-17.
3. *Quran*, V : 38.
4. *Hidaya*, II, pp. 512-18; *Fatawa-i-'Alamgiri*, II, p.703.
5. *Fatawa-i-'Alamgiri*, II, p. 713.

(iii) The amputation cannot be effected on stealing things which are generally used as common property such as grass, firewood, fishes, etc. or the things which are easily perishable, or things of which the culprit is a co-owner, including public property and the things which cannot be the object of property such as the Quran.

(iv) After the hadd punishment has been executed, the thief is free from pecuniary liability. If the stolen object is still in existence, it is then obligatory on the thief to return it to the owner. If the thief returns the stolen object before the application of punishment then, the hadd lapses.[1]

As for the punishment for theft in Mughal India, Aurangzeb's farman issued in 1672 and popularly known as the penal code of the period, contain several rules about them. The following articles of the farman related to theft are here noteworthy.

(i) When theft was proved against a man by legal evidence or his own confession before the qazi, the hadd would be enforced and the culprit be kept in prison till he really showed repentance.[2]

1. Hidaya, II, pp. 517-19; Fatawa-i-'Alamgiri, II, pp. 703-13.
2. Mirat, I, p. 278.

(ii) A man committed theft twice and on both occasion *hadd* was applied to him. Now if he repeated the offence for the third time, he was to be chastised and kept in prison till he repented.[1] If he still did not mend himself and committed the crime, he would be awarded life imprisonment.[2]

(iii) If a man had stolen an object of the value of less than *nisab* (ten dirhams) or he committed the offence in such a way that *hadd* was not applicable to him; he was to be simply chastised, provided it was his first chance. Otherwise he was to be imprisoned and in case of a repetation he might be punished with perpetual imprisonment or even execution.[3]

(iv) If a person, convicted for theft, informed that his booty was lodged with another man and it was actually discovered there. It was also proved that the man was an accomplice of the thief. The accomplice, would be only chastised, provided it was his first offence. If he was proved to be a habitual, he should be imprisoned till he mended himself. But if he continued to commit theft he was to be imprisoned for life.[4]

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1. *Mirat*, p. 278. This article is in agreement with Islamic Law.
2. According to the *Fatawa-i-Alamgiri* (II, 713) even death sentence can be awarded to the professional thief
3. *Mirat*, I, p. 278.
4. Ibid., p. 279.

(v) The stolen property was to be restored to the owner after legal proof of ownership, if he was available; otherwise it was to be deposited in the bait-ul-mal. Innocent purchasers of stolen property would not be punished. The property would be returned to the original owner after ascertaining his claim, or it would be kept in the bait-ul mal.[1]

(vi) A person accused of shroud-stealing (nabbash) would be detained. If charge was proved against him he was to be reprimanded and then released. If this did not reform him and he become a professional he would be banished or his hand cut off.[2]

The punishments laid down in the farman for theft are mostly in agreement with those prescribed by the shari'at. There are, however, some clear differences between the two sets of the penal code. According to the Islamic law a person against whom the charge of theft has been legally proved, is liable only to amputation of hand while Aurangzeb's farman adds that after the application of the hadd he should be kept in prison till the time of repentance. The second difference appears to be in the case of shroud-stealer. In the farman it is stated that if it was his first offence he was to be set

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1. Mir'at, I, pp. 278, 279.

2. Ibid., pp. 278-79.

free after chastisement. But if he made it a profession, he was to be banished or his hand cut of.[1] But according to the Fataws-i-'Alamgiri the said offender was not liable to amputation in any condition.[2]

By an analysis of the recorded cases of punishment for theft we may judge to what extent the Shariat's rules were followed in this sphere and how far Aurangzeb's own regulations were acted upon during his reign.

Out of the fourteen cases of theft which have come to our notice from the Mughal period, the culprit was subjected to the punishment of amputation only in two cases. (1) Tuzuk-i Jahangiri records the case of a professional thief who had committed the offence several times. Each time some part of his body was cut off. First, he lost his right hand; the second time the thumb of left hand; the third time left ear, fourth time heels of both feet and lastly nose.[3] Two thieves, who were caught by

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1. Ibid., p. 278.

2. Fataws-i-'Alamgiri, II, p. 714.

3. Tuzuk, p. 214. Only the first punishment awarded to the thief in the above case was lawful and the rest were unlawful. Jahangir (Tuzuk, p. 214) is also reported to have ordered that both the thumbs of servant of Muqarrab Khan, the Governor, to be cut off for stealing some champa trees along the river side. This was a gross violation of the Islamic law which does not permit mutiliation even for great crimes.

a gardener at Ajmer during the reign of Aurangzeb, were brought to the judicial court and they confessed that they had committed the crime. They were kept in custody for twenty days. The qazi gave verdit for the amputation of their hands and it was put into effect by the kotwal.[1]

There are five cases in which the thieves were ordered to be put to death, though the mode of the execution varied from case to case.

(3) In 1616 some thieves plundered the royal treasury in the Kotwali Chabutara. After a few days seven of them were apprehended along with their chief, Nawal. They were executed in punishment for the crime. Their chief Nawal was ordered to be trampled under the feet of an elephant. He resisted the bulky animal and succeeded in pushing it back. So his life was spared. After some times, he made good his escape, but he was later arrested and ordered by the Emperor to be hanged.[2]

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1. Waqa-i Ajmer, I, p. 29. Thevenot observes with reference to the state of Golkunda that when thieves were caught there, they were punished with amputation of hand which was the custom in most countries of Indies. (Indian Travels of Thevenot & Careri (ed. S.N. Sen) New Delhi, 1949, p. 136).

2. Tuzuk, p. 167. In this case the thieves were not liable to the hadd as stealing from the public property does not carries liability for the hadd punishment.

(4) Manucci records that during the reign of Shahjahan a person who was guilty of committing theft in a _sarai_ was executed.[1] (5) He also informs us that just after the coronation ceremony Aurangzeb ordered 500 thieves (probably convicted already) to be beheaded. The executions took place in front of the mosque called _Cadam-i-Rasul_.[2] (6) Recollecting the events at Lahore, Manucci records that during the governorship of Fidai Khan fifteen thieves were caught belonging to the tribe of _Myna_ and _Togi_. They were sentenced to death.[3] (7) After capturing the fortress of Vellore in 1703, Daud Khan had thrown all the thieves (caught in the army) to the crocodiles in the ditch around the fort.[4] It is not clear whether these were cases of ordinary or professional thieves. According to the _Fatawa_ only thieves of the latter category may be put to death as a last alternative.[5]

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1. Manucci, I, p. 67.

2. Ibid., II, p. 2.

3. Ibid., II, pp. 430-31. Commenting on Aurangzeb's way of imparting justice, Manucci states, "to show his equity, power and greatness, the king ordains with arrogance and in few words, that the thieves be beheaded; that the governors and _faujdars_ compensate the plundered travellers." (Ibid., II, pp. 435-36).

4. Manucci, II, p. 168; N. Manucci, _Memoirs of Mogul India_, London, 1913, p. 261.

5. _Fatawa-i-'Alamgiri_, II, p. 713.

We have come across seven cases of theft in which the culprits were merely imprisoned. They are as follows: (8) Some Indian people were accused of stealing goods of certain Englishmen at Navsari. On their confession of the theft they were put into prison by the order of the governor.[1] (9) Three persons namely Man, Dadu and Sahu were apprehended while selling certain stolen clothes. On investigation they confessed as to having committed the crime. The <u>Kotwal</u> put all of them behind the bar.[2] (10) It was reported from Ajmer that a thief who had taken away ten cows, was caught and brought before the <u>Kotwal</u>. The cows were returned to their owners[3] and the thief was put into prison.[4] (11) A thief was apprehended while he was driving away two camels belonging to the state. He was ordered to be imprisoned.[5] (12) A non-Muslim, called Dhana, was accused of having stolen some goods and three books of a state official. He confessed that he had

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1. <u>English Factories</u>, (ed. W. Foster) Oxford, 1907, II, pp. 219-20.

2. <u>Waqa'i-i Deccan</u>, (ed. Yusuf Husain Khan) Hyderabad, 1953, p. 81.

3. This was in accordance with the prescribed rule.

4. <u>Waqai-i-Ajmer</u>, I, p. 99.

5. Ibid., I, p. 162.

committed the crime in league with four other persons and that the goods were kept with one Jodh Singh. He was taken into custody. In the meanwhile he accepted Islam. As the conversion could not relieve him of the punishment after he had voluntarily confessed the crime, the qazi refused to pardon him. The thief got an opportunity to explain his case before the governor (Rukn-us-Saltanat), Khan-i-Jahan Bahadur Zafar Jang Kokaltash, who was passing by the kotwali. The latter prevailed upon the kotwal and secured his release.[1]
(13) A person called Hari (who was accompanying Dilawar Khan) was caught while he was escaping with a horse belonging to some one from amongst the soldiers of Raja Rai Singh. He was presented before Dilawar Khan who offered him the alternative of accepting Islam as against the execution. He chose to accept Islam. Consequently he was pardoned and relieved of the prescribed punishment.[2]

It may be said that imprisonment of thieves in the above cases was not the actual punishment but a temporary arrangement pending investigation of the case or awaiting

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1. Ibid., I, pp. 202-3.

2. Ibid., II, p. 447. It was against the shariat as the conversion to Islam had no effect on the execution of punishment for a person against whom the crime had been legally proved. (Fatawa-i-Alamgiri, III, p. 266).

further order from the higher authorities. But in those cases in which the theft was proved either by confession or by the testimony of the witnesses, there can be no doubt that the thieves were imprisoned in actual punishment.

There are, however, some unique forms of punishment given to the thieves as recorded by certain foreign travellers. Sir Thomas Roe records that during the reign of Jahangir boys who were accused of theft were deported out of the country to be sold in slavery.[1] Manucci states about the reign of Shah Jahan that sometimes those criminals whose crimes did not merit death penalty were deported beyond the Indus and sold there as slaves by the Emperor's order.[2] The Persian sources do not substantiate such types of punishment for theft.

(5) <u>Highway Robbery</u> (<u>qata'-ut tariq</u>) :

Highway robbers are defined in the Islamic Law as persons who, being too powerful for travellers to be resisted, fell upon them with some weapons and robbed them at a distance from a city.[3] Punishment prescribed in the Islamic law for the highway robbery varies according to the circumstances and nature of committing the crime.

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1. *The Embassy of Sir Thomas Roe*, pp. 266-67.

2. Manucci, I, p. 196.

3. *Hidaya*, II, pp. 533-34; *Fatawa-i-Alamgiri*, II, p. 727.

(i) Those who are seized after having committed simple robbery are to be punsihed with amputation of their right hand and left foot. If they are arrested before the commission of the offence they would be imprisoned till they repent.[1]

(ii) Those robbers who are seized after having committed murder without robbery are subject to execution with sword.[2]

(iii) If they had indulged both in plunder and murder, they are to be executed by crucifixion.[3]

(iv) If the highway robbers are more than one, the punishment would be awarded to all accomplices irrespective of their individual acts. If one of them is exempted from hadd on any ground (e.g. he is a minor), the hadd would lapse with regard to all.[4]

(v) The charge of highway robbery is established by confession or testimony of two witnesses.[5]

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1. Hidaya, II, p. 533; Fatawa-i-'Alamgiri, II, p. 728.

2&3. Hidaya, II, pp. 534-35; Fatawa-i-'Alamgiri, II, p. 728. Quran, V : 33, 34.

4. Hidaya, II, pp. 535-36. Repentance from highway-robbery before arrest causes the hadd to lapse.

5. Fatawa-i-'Alamgiri, II, p. 729.

Aurangzeb's penal code has the following punishments for highway robbery:

(i) If the charge of highway robbery has been legally established against a person, he should be subjected to *hadd* in the presence of the *qazi*.[1]

(ii) If a person accused of highway robbery is arrested and the governor and officers of the court are convinced of ~~the~~ his guilt, he would be imprisoned till he repents. This can be done without a trial. But if someone specifically charges him with the offence he must be tried before a *qazi*.[2]

(iii) Habitual dacoits who cause loss to the life and property of the people are to be executed.[3]

These rules have no contradiction with those quoted above from legal compendiums. Since the Aurangzeb's penal code is not very clear about the punishment actually prescribed for the highway robberies, a study of the specific cases of robberies may help us to understand the nature of the actual punishment that was awarded to the robbers during the Mughal rule in India.

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1. *Mir'at*, I, pp. 278-79.

2. *Mir'at*, I, pp. 278-79.

3. Ibid.

The sources have recorded the details of twelve cases of robbery. Out of these, the culprits were awarded death punishment in ten cases. But the mode of execution was not uniform in all the cases. A detailed study of the various cases is as follows:

(1) A person named Jamaluddin had resorted to robbery and taken refuge at Patna with his uncle, Sayyid Qasim. At the instance of the Emperor Akbar Munim Khan, Khan-i-Khanan, captured and sent him to Lahore where he was hanged on in the royal market and was shot at with arrows.[1]

(2) In the reign of Jahangir a band of criminals living at the bank of Yamuna were constantly engaged in theft and highway robbery. They had chosen forests as their refuges. Khan-i-Jahan Lodi was ordered to capture and kill them with the help of a group of state officials.[2]

(3) Writing about Mir Jumla (Shah Jahan's reign), Tavernier states that once a highway robber was brought before him, he ordered his stomach to be opened and he was to be thrown in a drain.[3]

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1. Badauni, II, p. 345.

2. Tuzuk, pp. 375-76.

3. Tavernier, I, pp. 292-93.

(4) It appears from the news letters of Ajmer that during the reign of Aurangzeb two highway robbers were apprehended and brought before the governor. They were put to death by his order.[1]

(5) It is reported that two servants of Aziz Beg, darogha-i-topkhana, had gone out with two camels to bring grass. Two person attempted to take away their camels. One of the robbers was killed by them on the spot, the other was arrested and brought before the governor, who put him in prison.[2]

(6) It was reported to Aurangzeb from Ahmadnagar that Jadun Rai, a Police Officer of Chandar, had killed some highway robbers and recovered one thousand muhr and five hundred rupees from them. Aurangzeb apparently approved of the action as he did not show any adverse reaction.[3]

(7) Muhammad Ibrahim, an imperial official, complained to Aurangzeb that while he was in the imperial retinue he was waylaid by some miscreants, The looted property included some goods and seven thousand rupees. The Emperor deputed several officers to different directions to make search for the robbers and kill them wherever they were found.[4]

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1. Waqai'-i Ajmer, II, p. 601.
2. Waqai'-i Ajmer, II, p. 626.
3. Akhbarat,(M.F. No. 259) 43rd R.Y., f. 123.
4. Ibid.,(M.F. No. 259) 45th R.Y., ff. 134-36.

(8) Fryer informs us that a gang of professional highway robbers was arrested. They used to plunder travellers and sometimes put them to death. They were condemned to be hanged on the order of Aurangzeb.[1]

(9) Fidai Khan (who was governor of Punjab in the reign of Aurangzeb) is reported to have ordered execution of Tarika Arain, a notorious robber.[2]

Apart from the capital punishment, it is also apparent from the recorded cases that sometimes robbers were punished with imprisonment.

(10) It is related about Jahangir that while he was encamping at the village Amrohi (in Punjab), he came to know about the activities of some people belonging to the castes of Khatur and Dalzak who were well-known for oppressing people and highway robbery. The Emperor ordered their capture and imprisonment at Lahore.[3]

(11) The news writer of Sanbher (in Ajmer) reported to the court that a band of highway robbers had murdered nine travellers and threw them into a well. Seven of them were apprehended along with twelve bulls, loaded with goods. They were ordered to be put in prison, till further action.[4]

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1. Fryer, I, p. 244. This was done in accordance with the Islamic Law.
2. Manucci, II, p. 196. This case appears to be against the established rule of Mughal India that award of capital punishment was exclusively under the jurisdiction of the Emperor (Akbar Nama, III, 38; Lahori, I, p. 139; Alamgiri Nama, p. 1079 & Mirat, I, p. 303.)
3. Tuzuk, p. 49.
4. Waqai-i-Ajmer, I, p. 146. They were legally subjected to execution with sword as they had committed murder without robbery.

(12) It was reported to Aurangzeb by Sayyid Hamid Khan (who was looking after his camp-followers) that two persons, who had murdered Bahram, a camel-driver, and forcibly took away his camels, had been arrested. The Emperor ordered them to be sent as prisoners to Ranthambore.[1] In the above three cases it is not clear whether the imprisonment of the robbers was for trial purpose or it was the actual punishment. Most probably they were waiting trial.

Qisas (retaliation) and Diyat (blood-money):

Qisas is another form of punishment prescribed by the Islamic law in cases of killing and wounding which do not prove fatal. The rules laid down in the shariat in connection with the qisas are as follows:

The Islamic law places the act of homicide in five categories according to the nature of the crime:

(a) deliberate intent ('amd) (b) quasi-deliberate intent (shibh-ul 'amd) (c) by mistake (khata) (d) cases assimilated to mistake (qaimuqam-i khata) (e) indirect homicide (qatl be sabab).[2]

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1. Akhbarat, (R.F. No. 257), 28th R.Y. f. 282.

2. Hidaya, IV, p. 543.

(a) <u>Deliberate Intent</u>:- If a person committed wilful murder by using a deadly weapon he is liable to retaliation. In case, the next of the kin of the slain person (<u>wali ud dam</u>) demanded the retaliation, it has to be awarded by the judge.[1] The kin has also the right to waive it away either gratuitously or by a settlement with the culprit in return for blood-money (<u>diyat</u>).[2]

(b) Quasi--deliberate intent - This implies an intentional killing but without using a deadly implement. This entails performance of <u>kaffara</u>[3] by the culprit and the payment of 'heavier' blood-money[4] by the male members of his tribe or the nearest related tribe or his confederates ('<u>aqila</u>).[5]

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1. According to Abu Hanifa, the person liable to retaliation would be beheaded with a sword or a similar weapon. Imam Shafii and Malik are in favour of killing the murderer in the manner in which he had killed his victim (<u>Hidaya</u>, IV, p. 547).

2. <u>Quran</u>, II : 173-74, <u>Hidaya</u>, IV, pp. 543-44. In case there are more than one claiments for the blood of the culprit, all must be unanimous in their demand.

3. <u>Kaffara</u> (expiration) signifies the manumission of a Muslim slave and in case of inability to do so, fasting for two consecutive months (<u>Hidaya</u>, II, p.390).

4. The <u>diyat</u> is of two kinds: (a) <u>mughallaza</u> ('heavier' blood-money) which amounts to 100 camels of a high quality; (b) <u>muhaqqaqa</u> ('normal' blood-money) which consists of 100 less valuable camels or 1,000 <u>dinars</u> or 10, 000 <u>dirhams</u>.

5. <u>Hidaya</u>, IV, pp. 544-45. Burning to death is '<u>amd</u>, flogging to death is <u>shibh-ul 'amd</u>. Homicide by drowning and strangling are controversial. According to Abu Hanifa, retaliation occurs in both the cases, while his two disciples (Muhammad & Abu Yusuf) do not agree with him (<u>Hidaya</u>, IV, pp. 550-544, 550).

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(c) Homicide by mistake - The mistake may be of two kinds: in the purpose (fil-qasd), e.g., if someone shoots at a man taking him for an animal and this causes his death; or in the act (fil-fe'l), e.g., if someone shoots at a game and accidentally hits a man. In both the situations the prescribed punishment is performance of kaffara and payment of the normal blood-money.[1]

(d) Assimilated to homicide by mistake - For example, a person rolls on another person in sleep and causes his death. This entails the same punishment as under category (c).[2]

(e) Indirect homicide:- A man digs a well and another falls in it and loses his life, the man (who has dug the well) is liable to the normal blood-money only, if he did so on some private or public property without the permission of the owner or the ruler respectively.[3]

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1. Quran, IV : 94; Hidaya, IV, p. 545.

2. Hidaya, IV, p. 545. Cases (a) to (d) have the further legal effect that they exclude the culprit from inheritance from the deceased (Ibid., pp. 544-45).

3. Hidaya, IV, pp. 545-46.

There are a few cases of intentional homicide to which the retaliation (Qisas) do not apply but the culprit will have to pay the blood-money. The situations in which retaliation is not enforcible are as follows:

(footnote continued)

As regard the rules laid down for the qisas and its application during the Mughal rule, we have evidence that the emperors took great care in investigating such cases and ascertaining the truth. Again and again they emphasised that capital punishment should be awarded only on the grounds sanctioned by the Shariat.[1] It was an established rule in those days that the cases involving capital punishment were finally decided by the emperor himself. The governor's right of awarding this punishment was taken away by Akbar.[2] His successors also made it obligatory for provincial and judicial officers to seek their approval and confirmation for the execution of death sentence.[3]

(Previous Footnote Continued)

(a) If an ascendant (e.g. father) kills his own descendant (e.g. son), there will be no retaliation.

(b) If there are several culprits and one of them is exempted from retaliation for any reason, the others will be exempted too.

(c) There is no liability (to retaliation) for murdering a person whose blood is allowed to be shed with impunity (mubah-ud dam) e.g., harbi - a person belonging to an enemy territory which is in a state of war with the Islamic state (Hidaya, IV, pp. 546-47, 556).

1. Akbar Nama, III, pp. 4-5, 390-91; Badauni, II, p. 147; Jahangir's India, p. 57; Tuzuk, pp. 239-40; Lahori, I, pp. 139, 275-76; Qazwini, Badshah Nama, Transcript (MS: Raza Library, Rampur) No. 13 (Research Library, Dept. of History, AMU., Aligarh) II, pp. 263, 355-59; Alamgir Nama II, pp. 1077-78; Ma'asir-i-Alamgiri, p. 528; Mirat, I, p. 282; Ahkam-i-Alamgiri, p. 43; Ruqaat, p. 15.

2. Akbar Nama, III, p. 38; Monserrate, p. 209.

3. De Laet, p. 93; Lahori, I, p. 139; Alamgir Nama, II, p. 1079; Mirat, I, p. 303; Waqai-i-Ajmer, pp. 14, 18-19; Manucci, II, p. 394.

Even after the death sentence had been passed against a person, the Mughal emperors did not favour haste in its execution. Akbar is reported to have ordained that the condemned person should not be executed until he gave order for the third time.[1] Jahangir had laid down the rule that a person against whom death sentence had been passed, would not be executed till sunset, as he might revise the judgement on a mercy appeal from the convicted person or his relations. If no fresh order rescinding the punishment was passed till sunset, he was to be executed.[2] Shah Jahan also followed the practice established by his predecessors.[3]

Aurangzeb penal code laid down that the persons legally convicted of murder should be detained and a report thereof be sent to the royal court.[4] He repeatedly issued orders emphasising the rule that the people were executed only for offences in which capital punishment was prescribed by the Shariat and that he never liked human blood to be shed merely to satisfy one's whim and caprice.[5]

1. Monserrate, p. 209.
2. *Tuzuk*, pp. 239-40.
3. Qazuini, II, pp. 355-57; Bhim Sen, *Nuskha-i-Dilkusha*, Rotograph No. 43 (MS: B. Museum Or. 23) ff. 27a-b.
4. *Mirat*, I, p. 282.
5. *Alamgir Nama*, II, pp. 1077-78; *Ma'asir-i-Alamgiri*, p. 528.

How far these rules and principles were practically followed may be judged by an analysis of the recorded cases of murder and punishment. A large number of such cases are available in the contemporary sources. But the lack of details about the nature of the offence and circumstances in which it was committed makes difficult their analysation and placing them under separate categories for applying the respective punishment prescribed for each.

We have analysed here forty three cases of murder and the punishments awarded to the culprits.[1] In cases (Nos. 1-17) the murderers were awarded death sentence after their crime had been legally established. In six (4, 12, 14, 15, 16, 17) out of seventeen cases, the culprits were executed in retaliation on demand from the heirs of the deceased.[2] The remaining eleven cases were brought to the notice of the emperor who decreed that the murderer was to be executed. In most of these cases victims were government officials. In three cases (13, 16, 17) the culprits were non-Muslims and the victims were also non-Muslims in two cases (16 & 17). It is interesting to note that in the case (17) the court was inclined to forego

1. The table of the cases is given in Appendix A.
2. In two (12, 15) of these cases, the heirs of the deceased were persuaded by the authorities to pardon the condemned in return for blood-money. But they did not agree and the death sentence was implemented. (Muhammad Salih, Amal-i-Salih, Calcutta, 1923, III, pp. 344-45; Maasir-i-Alamgiri, p. 126).

2.-Manucci,-II,-p.-425.

the execution if the culprit a Portuguese accepted Islam, but he refused.[1] On the other hand the murderer, a Rajput (in the case 16) fearing loss of his life embraced Islam after his conviction. The matter was reported to Aurangzeb who referred the case to the qazi. The qazi left the option to the heirs who were not prepared to forgive him and consequently, the culprit was put to death.[2]

As far as the manner of execution of death punishment was concerned, only in one case (12) it was done with a sword in accordance with the Islamic law.[3] In one case (4) the culprit was crushed under the feet of the elephant. In another case (1) the culprit was pushed down from the roof of a building. In fourteen cases (2, 3, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17) the manner in which the capital punishment was awarded is not recorded.

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1. Manucci, II, p. 425.

2. Akhbarat, (M.F.No. 259) 43rd R.Y. f. 149. This was in agreement with the shariat rules. In one case (2) the culprit was punished with retaliation by Akbar's order though he was a mad. (Badauni, III, p. 338). Aurangzeb is reported to have merely imprisoned a mad man convincted of murder (Akhbarat, 25th R.Y. f. 403). In another case Akbar had ordered the execution of a person who had deceitfully murdered his father by poison. Aurangzeb's penal code prescribes simple imprisonment till repentance for deceitful administration of poison causing death (Mirat, I, p. 281).

3. This happened with regard to Murad Bakhsh for murder of Ali Naqi (Isardas Nagar, Futuhat-i-Alamgiri, Rotograph No. 42 (MS: B. Museum Add. 23, 884) Research Library, Department of History (AMU., Aligarh) ff. 47b-48a; Manucci, I, p. 240).

There is only one case (18) out of forty five in which blood-money is mentioned to have been demanded by the heirs of a murdered person instead of _qisas_.[1] We are informed by the English factory records that the East India Company laid a claim for payment of 560½ _mahmudis_ from the Mughal government for the life of an Englishman who had been killed by some persons from Pahalwan Safed. It was also clarified in the same source that the amount mentioned above had been settled when a similar crime was committed by their own men at Surat.[2]

In five cases (19-23) the heirs of the deceased did not demand retaliation (_Qisas_) from the murderers and pardoned them altogether. But in two cases (21 & 22) the government awarded them some minor punishment as admonishment.[3] In two cases (19 & 21) both the culprits and victims were non-Muslims. In one case (20) the culprit was a non-Muslim and the victim a Muslim, while in another, (23) the case was reverse.

1. The _Mahmudi_ was the main coin of Gujarat before it was conquered by the Mughals. Though the rupees was introduced by Akbar at Ahmadabad after his conquest of Gujarat, but the _Mahmudi_ continued to be minted at Surat for sometime longer. The rate of exchange was subject to fluctuations, but it was normally five _mahmudis_ for two rupees (S.H. Hodivala, _Historical Studies in Mughal Numismatic_, Bombay, 1976, pp.115-31).

2. _English Factories_ II (1622-23) p. 284. There are, also some fragmentary references to the practice of taking blood-money in return of retaliation in Mughal India (_Akbar Nama_, III, pt. I, p. 266; Abdul Baqi Nihawandi, _Maasir-i-Rahimi_, Calcutta, 1925, p. 283; _Akhbarat_, 46th R.Y.)

3. In the first case (_Waqa-i-Ajmer_, I, pp. 607-8), the culprit was imprisoned and in another (_Maasir-i Alamgiri_, p. 188), he was dismissed from the service.

There are five cases Nos (24-28) in which the Emperor himself exempted those persons convicted of murder from the capital punishment and awarded some other punishments. Emperor Akbar granted pardon to the culprit, the son of his dear foster-mother, Maham Anga who was also involved in that case. Perhaps it was out of regard for his foster-mother (case no. 24). Shah Jahan is said to have revised death sentence and granted amnesty to Rustam, convicted in a murder case, in the final order (case no. 25). Aurangzeb had pardonned Suhrab who was condemned to death, on the recommendation of prince Shah Alam that he was one of the effecient officials of the state. (Case No. 26). Aurangzeb is reported to have granted pardon to a youngman (a soldier) in consideration of his sentiments though he ought to have been capitally punished.[4] (Case No. 27). Aurangzeb did not take any action against a non-Muslim murderer who accepted Islam after committing the crime.[5] (Case No. 28)

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1. The ruler is authorised to grant total amnesty or convert death - sentence into diya (blood money) only in case the slain is heirless (Fatawa-i-'Alamgiri, IV, p. 537).

2. Akbar Nama, II, p. 143.

3. Nuskha-i-Dilkusha, ff. 27a-b.

4. He had killed a custom officer on latter's insistence on checking the cart in which he was travelling with his wife (Manucci, II, p. 163.).

5. Bernier, I, p. 131.

In seven cases (29-35) the persons convicted for murder were merely punished with imprisonment. In case (No.29) the murderer was non-Muslim and the murdered were parents of a Muslim woman whom the murderer had illegally detained in his house. In addition to cutting off the tongue of the culprit he was awarded life imprisonment.[1] In one case (No. 30) a man was murdered by his own brother for his bad conduct and no demand for retaliation was made by his mother. The culprit was ordered to be merely imprisoned.[2] In case (No. 31) a young servant murdered his master (a state-official), because the latter had disgraced him. The governor merely imprisoned him for six months in spite of the demand for his execution by the relatives of the murdered. Their demand could not be conceded to due to the popular belief that the boy had properly acted.[3] In four (32-35) of the eight cases the persons accused for murder were temporarily imprisoned, for either their cases had been reported to the Emperor for his verdict or investigation of their case was in process.[4]

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1. Tuzuk, p. 50.

2. Tuzuk, p. 360.

3. Tavernier, I, pp. 122-23.

4. Waqai-i-Deccan, p. 59; Waqai-i-Ajmer, I, p. 232; II, p. [illegible]; Akhbarat, (M.F.No. 288) 39th R.Y. ff.22-23.

In three cases (Nos. 36-38) the culprits, who were state-officials, were dismissed from their posts as punishment for murder.[1] Two imperial servants, whose mutual fight led to the murder of several persons from amongst their followers were punished with demotion in their ranks[2] (Case No. 39). In two cases (Nos 40-41) the property of the culprits were escheated as they had fled away and could not be arrested.[3] In one case (No. 42) the culprit, who had killed his wife on finding her in bed-with her lover, was merely subjected to monetary fine.[4] There is one case (No. 43) in which the Emperor is reported to have ordered investigation, but no further details are available about it.[5]

It appears from analysis of the above mentioned cases of murder and punishment that the shariat's rules were not followed by the Mughals in dealing with most of these cases.

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1. Akhbarat, (M.F. No. 257) 28th R.Y. ff. 24, 821, 47th R.Y. ff. 197-98. In one (36) of these cases the murderer who was a mad man (not liable to the prescribed punishment) was imprisoned after dismissal from the service. Akbar, as stated above, had ordered for execution of Khwaja Muazzam, a mad man, in relation for murder of his wife (Badauni, II, p. 338).

2. Ibid., 43rd R.Y. f. 208.

3. Waqai-i-Ajmer, I, p. 265; Waqai-i-Deccan, p. 83.

4. Fryer, I, p. 248.

5. Akhbarat, 48th R.Y. f. 185.

The cases in which the punishment sanctioned by the *shariat* was awarded to the culprits are less in number than those in which the punishments were unlawful. Even in cases in which the punishment awarded was in accordance with the *shariat*, the mode of its execution was not within the limits laid down by the *shariat*. One thing, however, is quite clear from all the above cases that no distinction was made between Muslim and non-Muslim regarding the punishments.

3. REBELLION AND TREASON

To revolt against a Muslim ruler endangering peace and security of the Islamic state is a culpable crime for which capital punishment has been prescribed in the Islamic law.[1] The problem has also been discussed in detail in Aurangzeb's penal code. According to it the conspirators or rebels who collected material and made preparation for war, against a state, but had not taken a position for resistance should be arrested and imprisoned till they repented and promised to abstain from such activities. If they established a strong hold with a view to resist, they should be dealt with severely, attacked and annihilated, or forced to disperse. The captured rebels might be put to death or kept in prison till their power is crushed. If they repented and assured the authorities that their conduct in future would be beyond

1. *Quran*, V : 34-35, *Hidaya*, II, pp. 584-86.

reproach, their property, if confiscated would be restored to them.[1]

The above mentioned regulations for dealing with the rebels do not contravene the rules of the *shariat* meant for such problems. But in practice the situation was different regarding the punishment for political offences during the Mughal period. In dealing with the problems of rebellion and treason, the Mughal Emperors exercised their authority with greater force than in any other sphere. In minor cases of rebellion and even on suspicion of treason they used to give death sentence irrespective of the fact that it was sanctioned by the *shariat* or not.[2]

A study of the available information about the cases of rebellion and the punishment given by the Mughals to the rebels is hereby made to find out the rules laid down and acted upon by them. We have analysed thirty one cases of rebellion and treason in which the persons charged of the crime were punished variously. In twenty one cases capital punishment was awarded to such persons. (1) In 1567, Bahadur Khan, the brother of Khan-i-Zaman 'Ali Quli Khan (the rebel who was killed in

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1. *Mirat*, I, p. 282.

2. Akbar did not accept the advice of Qazi Tawaisi that he ought not to execute the followers of Khan-i-Zaman, the rebel; and confiscate their property after the rebellion had been suppressed and the battle was over. Instead the Emperor replaced Qazi Tawaisi by Qazi Yaqub. (Badauni, III, p. 79)

fighting against the Mughal army) was executed at the instance of the Emperor, while a number of his associates were ordered to be trampled under the feet of elephants.[1] (2) Ibrahim Husain Mirza, the rebel, was defeated by Husain Quli Khan in 1574. The latter brought Masud Husain, the brother of the rebel and 300 other prisoners with him to the capital. Some of them were put to death, the rest were released. Masud Husain was put in prison at Gwalior.[2] (3) In the same year Muhammad Husain Mirza, who had revolted and waged war against the imperial army, was captured and brought to the court. Akbar ordered him to be kept under the custody of Rai Singh, governor of Jodhpur. The latter killed the Mirza without any express order of the Emperor. But as the Emperor did not question his action, he was apparently in favour of that punishment.[3] (4) In 1580, many wicked persons such as Miraki, Shihab Badakhshi and others hatched a conspiracy against Akbar. They intended to create a disturbance and unrest in the eastern provinces. Their

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1. Akbar Nama, II, p. 70; Badauni, II, p. 103.

2. Akbar Nama, III, pp. 36-37; Badauni, II, pp. 151-61. In both the cases, execution of the family or followers of the rebels was not in accordance with the shariat as it does not permit such action against them after the battle is over and sign of rebellion disappears.

3. Badauni, II, pp. 167-69.

plot was discovered and an official inquiry was conducted. As a result of the inquiry, Mirzaki (apparently the ring-leader) was executed and others were put in prison.[1] (5) In 1581 Roshan Beg, a state official, had left the imperial service and joined the rebels in Bengal. He was captured and put to death at the royal order.[2] (6) In 1583 Bahadur Khan, son of Sa'id Khan Badakhshi turned rebel and took refuge in the hills of Tirhut and devastated the country. He was captured by Ghazi Khan, Jagirdar of the pargana and sent to the court. He was executed at the instance of the Emperor.[3] (7) Another rebel, Nur Muhammad, was brought to the court about the same period and was ordered by the Emperor to be put to death.[4] (8) Jahangir's son Prince Khusrau revolted in 1605-6. The punishments given to various rebels was not uniform. Five of his associates, who were captured before the defeat of Khusrau, were ordered to be cast before the elephants on confession of the crime. Two others were kept under custody till completion of inquiry against them.[5] The prince was blinded and imprisoned. Two of his

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1. Akbar Nama, III, p. 298.
2. Akbar Nama, III, p. 309; Badauni, II, p. 280.
3. Akbar Nama, III, pp. 374-75.
4. Akbar Nama, III, p. 397
5. This suggests that the criminals were punished after they had been legally convicted.

associates, Husain Beg and Abdur Rahim, were put in skins of a cow and an ass respectively and paraded through the city. As the skin of the cow quickly dried, Husain Beg died. Abdur Rahim, however, survived and fled. Some associate of Khusrau were impaled on the stakes set up on both sides of the road between the city of Lahore and the garden of Mirza Kamran.[1] (9) Saheb Rao, a *zamindar*, who had turned rebellious, was pardoned by Jahangir on the promise of loyalty. But when he again raised the banner of revolt he was captured and trodden under the feet of an elephant, though he had offered to pay one lac *huns* as blood-money.[2] (10) In 1613 Dalip, son of Rai Singh, had turned a rebel. He was captured and brought to the court. He was awarded capital punishment.[3] (11) In 1620 Chauper Mal, who had been sent to conquer the fort of Kangra, showed rebellious activities. He was executed at the instance of the Emperor.[4] (12) In 1623, forty one rebels, who had been taken prisoner at Ahmedabad, were brought to the court and presented before the Emperor. Their ring-leaders were ordered to be trampled under the feet of elephants.[5] (13) Mukhtaram

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1. *Tuzuk*, pp. 28-29, 32, 58.

2. *Maasir-i-Rahimi*, p. 283.

3. Ibid., pp. 126, 370.

4. Elliot & Dowson, *History of India as told by its own Historians*, Vol. VI (*Waqiat-i-Jahangiri*) London, 1875, p. 374.

5. *Tuzuk*, p. 370.

Khan and Khalil Beg were accused of indulging in rebellious activities. After the charge was legally established against them, Jahangir ordered their execution.[1] (14) Subhan Quli, the huntsman, was ordered to be put to death for his mutinous conduct.[2] (15) In the reign of Shah Jahan, Raja Jajhar, a notorious rebel, was chased by the imperial army and put to death after being captured.[3] (16) Muhammad 'Ali 'Alam Shahi along with some of his accomplices were convicted of planning conspiring against the imperial authority in the reign of Aurangzeb. They were confined at the order of the Emperor. But when they showed no sign of repentance, they were executed by the royal order.[4] (17) Gokhala Jat, one of the chief rebels and a source of great disturbance in the Patna region, was ordered to be executed along with his chief associate, named Sangi.[5] (18) Haibat was convicted of creating disturbance which led to the loss of several lives. He was ordered by Aurangzeb to be put to death.[6]

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1. *Tuzuk*, pp. 354, 382.
2. *Tuzuk*, pp. 239-40.
3. Lahori, I, pp. 261-62.
4. Khafi Khan, II, p. 124. This is in agreement with the rules laid down in Aurangzeb's penal code (*Mirat*, I, p. 280).
5. *Maasir-i-Alamgiri*, pp. 93-94. Before execution they were subjected to multilliation which was unlawful in view of the *shariat*.
6. *Alamgir Nama*, I, p. 434.

(19) In 1699 Ugar Sen and twenty other rebels were brought from Muradabad and presented before Aurangzeb. They were ordered to be executed by the *Kotwal*.[1]

There is one case from Akbar's reign in which theologians were given death punishment for issuing legal verdit (*fatwa*) in favour of rebellion against the Emperor for his irreligious activities. (20) In 1581 Mulla Muhammad Yazdi, Qazi of Jaunpur gave *fatwa* that as Akbar had deviated from the path of *shariat* and had become heterodox, the holy war (*jihad*) should be started against him. This fanned the spark of rebellion and a number of rebels raised their head specially in Bengal. Muhammad Yazdi and his associate Muizzul-Mulk were summoned to the court on some pretex. The Emperor ordered them to be separately sent to Gwalior where they were placed in a broken boat and drowned in the water. Some other theologians suspected of treason under impact of the *fatwa* were also put to death.[2]

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1. *Akhbarat*, (R.F. No. 258), 40th R.Y. f. 128.

2. Badauni, II, pp. 277-78; *Akbar Nama*, II, p. 309. In the reign of Aurangzeb, a number of theologians in complicity with Prince Akbar had given *fatwa* of revolt against the Emperor. Aurangzeb ordered them to be severely flogged and put in prison (*Maasir-i-Alamgiri*, pp. 203-4).

Here eleven cases are taken for study wherein the persons convicted of conspiracy to rebel or association with rebels were put into prison in punishment. They are as follows: (21) The followers and family members of the rebel Khan-i-Zaman, who were captured after the death of the Khan, were imprisoned at the order of Akbar.[1] (22) I'timad Khan and other Gujarati officials were charged with conspiracy and contumacious behaviour in 1572. They were presented before Akbar who ordered them to be imprisoned.[2] (23) Masud Husain, who was a party to the rebellion of his brother Ibrahim Husain in 1574, was ordered to be imprisoned at Gwalior.[3] (24) The associates of Ali Alam Shahi and Mirzaki (who were executed for rebellion in 1580) were ordered to be imprisoned.[4] (25) In 1581 Mir Ali Akbar, who was associated with the rebellion of Roshan Beg in Bengal, was ordered by the Emperor to be kept in confinement.[5] (26) It has already been mentioned about the reign of Jahangir that the rebel prince (Khusrau) was merely kept in prison (after being blinded) by the order of the Emperor while a number of his associates were put to death.[6] (27) In

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1. Badauni, II, pp. 51, 97-100.
2. *Akbar Nama*, II, pp. 9-11.
3. *Akbar Nama*, III, pp. 36-38; Badauni, II, pp. 151-61.
4. *Akbar Nama*, III, p. 290.
5. Ibid., p. 309; Badauni, II, p. 280.
6. *Tuzuk*, pp. 28-29, 32, 58.

the same period Badiuzzaman, the son of Mirza Shah Rukh, had started for Mewar with a group of rebels to join the Rana. At the instance of the Emperor he was captured by the governor of Malwa and sent as prisoner to the court.[1] (28) In the reign of Shah Jahan, the entire family of Raja Jajhar Singh, the rebel, were made prisoner and sent to the court.[2] (29) Aurangzeb is reported to have ordered the associates of the rebel Prince Akbar, to be imprisoned in different places.[3] (30) In 1700 Wahid Afghan was ordered to be made a prisoner along with his associates and their property to be confiscated for their destructive activities in the territory of Prince Azam.[4] (31) Aurangzeb is reported to have ordered the imprisonment of Shah Alam and his sons on a charge of conspiracy with Abul Hasan of Golkunda.[5] Most of these cases seem incomplete and the confinement of the rebels or their associates was temporary.

The study of the above mentioned cases shows that the Mughal Emperors had made it a rule in general to award capital punishment to the ring leaders of the rebellion and to punish

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1. Tuzuk, p. 60.
2. Lahori, I, pp. 261-62.
3. Maasir-i-Alamgiri, pp. 203-4.
4. Akhbarat, (M.F. No. 289) 43rd R.Y. f. 247.
5. Maasir-i-Alamgiri, pp. 298-400.

their associates with imprisonment or in some other ways such as banishment and public parading. About a few cases we can certainly say that those accused of rebellion were punished after actual conviction. Cases are on record showing that fear has been created in the heart of the people that they would be strictly punished for contumacious behaviour and conspiracy. Fazil Khan, the officer incharge of royal ward robe, planned to send secretly five lac gold coins to the rebel prince, Muhammad Akbar, in Persia. The Governor of Surat discovered the plot and informed Aurangzeb. Learning that his secret scheme had come to the knowledge of the Emperor and fearing its consequense, Fazil Khan ended his life by poison.[1]

4. TAZIR

It has already[2] been stated that the *tazir* is a reformative punishment, prescribed for those offences which are out of purview of the *hudud*. The offences punishable under *tazir* may be related to religion, public security and public morals as counterfeiting coins, minor thefts, gambling, defamation of religion, negligence of official duty, misappropriation of state treasury etc. Though kind and amount of punishment under *tazir* is entirely left to the discretion of the judges but the punishment under this category have been

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1. Manucci, III, p. 287.

2. Supra, p. 42

generally enlisted by the jurists as reprimand, imprisonment, public parading, flogging, monetary fine, etc. Some jurists are also of the view that the degree of punishment under *tazir* varies from person to person in accordance with the age, sex, social status of the offender and the nature of crimes. All those offences excluded from the jurisdiction of *hadd* could easily be adjusted under *tazir*. Though the court is free to introduce new modes of punishment but the punishment under *tazir* should not exceed the limits of the *hadd*.[1]

As regard the implementation of the above provisions of *tazir* in Mughal India, Aurangzeb's *farman* on penal code is the only source which discusses the problem in some details. The *farman* mentions those offences in which the offender could be penalised under *tazir*. They are as follows:

(I) *Counterfeiting coins* - Whoever counterfeits coins for the first time shall be chastised and reprimanded and then set free. But in case he repeats the offence, he shall be chastised and imprisoned till he repents. A habitual counterfeiter, however, will get perpetual imprisonment.[2]

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1. *Hidaya*, II, pp. 313-14. Mawardi, p. 205. According to Abu Hanifa and Imam Muhammad, the minimum punishment under *tazir* is three lashes and maximum thirty nine. Abu Yusuf thinks that at maximum seventy five lashes may be given. (Ibid).

2. *Mirat*, I, p. 280.

(II) Acquisition of Property by Cheating - A person who falsely represents himself as alchemist and cheats other people of their property, shall be chastised (tazir) and imprisoned till he repents. The property in question shall be restored to the legal owner or be deposited in the bait-ul mal.[1]

(III) Deceitful administration of poison - One who deceitfully gives poison to a person causing his death, shall be punished with chastisement (tazir) and imprisonment till the guilty shows repentance for his action.[2]

(IV) Kidnapping - Kidnapper of another's wife or children shall be punished with imprisonment till he restores the kidnapped to the husband or legal guardian. Otherwise he would be permanently kept in prison.[3]

(V) Gambling - Those who are convicted of gambling for the first time shall be chastised. In case they repeat the offence, they shall be put in prison after chastisement till they show repentance. If they become professional gamblers they will get life imprisonment. The property involved in the game shall be restored to the legal

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1. Ibid., p. 281.
2. Ibid., p. 281.
3. Ibid., p. 281.

owner, if he is available otherwise deposited in *bait-ul-mal*.[1]

Besides, we are informed by certain contemporary sources that in Mughal India the punishment under *tazir* was awarded according to the rank and status of the culprit, because a severe glance was like death to a man of noble family, while a kick would not reform a wicked person.[2]

Some cases are mentioned here which give an idea as to the kind of punishment given for offences coming under the jurisdiction of *tazir*. In 1582, Qazi Jalal Multani was ordered by the Emperor to be dismissed from the post of chief *qazi* and exiled to the Deccan for his dishonesty and misappropriation of the state treasury.[3] Itimad-ud-Daula, who had embezzled five thousand rupees in the reign of Jahangir was punished with imprisonment.[4] Safi Khan, the governor of Bihar, was ordered by Aurangzeb to be kept into the custody of Mughal Khan for misappropriating fifty six thousand rupees from the state

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1. *Mirat*, I, p. 281.
2. *Ma'asir-ul Umara*, III, pt. I, p. 162; *Mirat*, I, p. 186.
3. Badauni, II, p. 313; *Akbar Nama*, III, pp. 377-78.
4. De Laet, *De Imperio Magni Mogolis* (*The Empire of the Great Mogul*) Eng. tr. J.S. Hoyland and S.N. Banerjee, Bombay 1928, p. 178.

treasury till he paid back the amount.[1] It was brought to the notice of Aurangzeb that Amir Habibullah of Jaunpur, *amin-i-jizya*, was detained by Inayat-ullah Khan on his confession for cheating the imperial treasury of Rs.40,000. Some collectors were appointed to exact money from him. The Emperor granted him pardon as he was reported to have spent all the money for charitable purposes.[2]

We are informed by Badauni that during the reign of Akbar counterfeiters were punished with monetary fine.[3] The deficiency in weight was also an offence covered by the *tazir*. Muhammad Baqar, a *muhtasib* of Aurangzeb's reign, put a milkman in prison for using deficient weight and did not release him even on his wife's representation to the higher authorities.[4]

The abduction of a child or a girl was also liable to be dealt with under the *tazir*. The punishment awarded by the Mughals for this offence varies from period to period. Jahangir awarded capital punishment to the main culprit in a case of abduction in which the abducted girl had died while in the custody of the abductor.[5] Shah Jahan had dismissed a

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1. *Maasir-i Alamgiri*, p. 266.
2. *Ahkam-i-Alamgiri*, pp. 53-54.
3. Badauni, II, p. 280.
4. *Waqai-i-Ajmer*, I, p. 223.
5. *Tuzuk*, p. 83.

soldier and banished him from the country for abducting the slave-girl of a Hindu clerk.[1] Aurangzeb is reported to have ordered the imprisonment of Nur Ali, a state official, who had abducted a Rajput girl. The culprit was also required to restore the girl to her parents and he did so.[2] It seems that there was no uniform rule of punishment for abduction.

For negligence in duty and abuse of authority, the government servants or state officials were punished with dismissal from their post, transfer of jagir, resumption of or demotion in ranks besides the usual punishments given in the tazir. The cases recorded in the sources show that the state officials were chastised in above mentioned ways for negligence in official duty, inefficiency in work, misbehaviour with the public, injustice, dishonesty, etc.[3]

Imposition of monetary fine was a controversial matter among the Hanafite jurists. Abu Hanifa considered it unlawful, while according to Abu Yusuf it was permissible.[4]

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1. Manucci, I, pp. 195-96.

2. Akhbarat, 47th R.Y. f. 150. Aurangzeb's penal code prescribes for this offence either severe chastisement or public parading or banishment, (Mirat, I, p. 282).

3. Badauni, II, pp. 277-78; Akbar Nama, III, pt. I, pp. 315-16; Tuzuk, pp. 306, 336; Mirat, I, 305; Akhbarat, (M.F. No. 257) 28th R.Y. f. 133; Akham-i-Alamgiri, pp. 35-36; Elliot & Dowson, History of India as Told by its own Historians, London 1877, VII, p.86.

4. Ibn-i-Taimiya, al-Siyasat-ush Shariah, pp. 53-55.

The same controversy existed during the Mughal period also. It is evident from the A'in-i Akbari that the monetary fine was included in the list of penalties prescribed by the state.[1] Badauni states that during the reign of Akbar fines were imposed on persons charged with counterfeiting of coins.[2] The practice of imposing fines continued during the reign of Jahangir. The Tuzuk states that two persons, namely - Raju and Amba had made oppression and tyranny their profession under the leadership of eunuch Daulat Khan. The Emperor ordered Raju to be executed and a fine of one lac and forty thousand rupees was realised from Amba who was a wealthy man.[3] Writing in the reign of Shah Jahan Manrique says that the shiqdar of Midnapur was charged a fine of two hundred rupees for arresting and harassing him and his party.[4] There seems to be a contradiction with regard to the state attitude toward monetary fines during Aurangzeb's reign. He issued an order proclaiming it as illegal and warned the officials that the violation of this rule would mean severe action.[5] But he is reported to have imposed a fine of fifty thousand rupees on

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1. A'in-i-Akbari, I, p. 98.
2. Badauni, II, p. 280.
3. Tuzuk, p. 35. The amount was distributed in charity.
4. Travels of Manrique, (ed. Luard and Hosten), Hakluyt Society Edition), I, p. 425.
5. Mirat, I, p. 293.

Prince Muhammad Azam (in addition to the transfer of this *jagir*) for his misbehaviour with a lady.[1]

From the above discussion it may be deducted that the Mughal emperors treated the Muslims and non-Muslims alike in the application of the penal law for various offences. In dealing with the problem of crime and punishment they generally acted according to their own discretion and rules and they did not always follow the *shariat* laws. There are a number of cases in which punishment did conform to the Islamic penal code, but its mode of execution was unlawful. Impaling, trampling under feet of elephants, throwing before some beasts, drowning in water adopted by the Mughals to inflict death penalty is not permitted in the Islamic law. They had prohibited mutiliation of limbs.[2] But there are some cases to show that in practice this punishment was prevalent.[3] It is, however, clear from the recorded cases that they resorted to the unlawful mode of punishment generally in cases of rebellion, treason and breach of peace and order and the main motive was to create terror in the hearts of other people or to make the punishment exemplary. It is also to be noted that the foreign

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1. *Ahkam-i-Alamgiri*, pp. 29-30. The amount collected from the Prince was deposited in public treasury (*Khazana-i-'Amira*).

2. *Tuzuk*, pp. 4, 50, 177; Qazvini, p. 259; *Mirat*, I, pp. 187, 190.

3. *Akbar Nama*, I, p. 140; *Tuzuk*, p. 214; *Ma'asir-i-Alamgiri*, pp. 93-94; Manucci, I, p. 241.

travellers have presented so distorted picture of the Mughal administration that we have a very blurred idea of the actual situation. If we were fortunate enough to have the proceedings of the Mughal judiciary with us, we would have been in a better position to elucidate the matter. Mostly the cases of political crimes and offences against state have attracted the attention of the historians and foreign travellers. Naturally in such cases the administration, the security of the state being prime concern, had to take stern action. Our sources, especially the foreign account, exerted to utmost in high lighting them. So the political punishments, which were usually severe, emerged as the most prominent aspect of the Mughal penal code.

to his relatives for it.[1] It cannot be ruled out that the elephants of the deceased were seized to adjust arrears of the soldiers. (33) The property of Diler Khan, an interim governor of the Deccan, who died in 1683, was ordered to be seized and deposited in the state treasury. He had left behind two sons, but the confiscation was made to clear the state-dues.[2] (37) Shaista Khan, the governor of Agra died in 1694. The Emperor ordered the escheat of his entire property, because he owed money to the state.[3]

There are nine cases which show that the property of the deceased official was confiscated apparently to adjust the state-debt. The property which was left after deducting the debt was restored to the heirs of the deceased. A brief account of these cases will clear the point.

(4) Shaikh Ibrahim Chishti, the governor of Fatehpur died in 1591. The property left by him included twenty five crore rupees in cash, elephants, horses and some

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1. Akhbarat (MF. No. 257) 24th R.Y. f. 106.

2. Nuskha-i-Dilkusha, ff. 830-b; Maasir-i-Alamgiri, p. 237; Maasir-ul-Umara, II, pp. 42-48.

3. Ruqaat (Letter No. 128) p. 35; Maasir-i-Alamgiri, pp. 368-69; Maasir-ul Umara, II, pp. 690-701.

other valuables. The cash was escheated to the state treasury and the rest property was given to his sons and agents.[1] (11) Asaf Khan, the governor of Punjab, died in 1641. Apart from two and half crore rupees which he left in cash, his house of Lahore was estimated of costing twenty lac rupees. Out of the cash, twenty lacs were distributed among three sons and four daughters. The house of Lahore was exclusively given to Dara Shikoh.[2] In both the cases there is no clear indication to the liability of the deceased to the state. But it appears that the partial escheat was effected to clear state dues standing against him. (13) Islam Khan, the governor of the Deccan died in 1647 leaving five sons. At the imperial order his property was temporarily escheated and after the state-debt was deducted the remainder was distributed among his heirs.[3] (16) Ali Mardan Khan, the governor of Kashmir, died in 1657. His property was valued at one crore rupees. Out of it, fifty lack rupees were taken by state as he owed that amount to the state and the rest was left to be distributed among his heirs.[4] (17) In 1662, Ali Yar Beg, a government officer, died during an expedition to Tilangana. His property

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1. Badauni, II, p. 374.

2. <u>Maasir-ul Umara</u>, II, pp. 580-601.

3. Waris, <u>Badshah Nama</u>, transcript No. 86, Research Library, Department of History (AMU., Aligarh), I, pp. 16-17; <u>Maasir-ul Umara</u>, I, p. 165.

4. <u>Amal-i Salih</u>, III, p. 248; <u>Maasir-ul Umara</u>, II, pp. 795-807.

was seized and information was sent to the royal court. The Emperor ordered that after deduction of the state-debt, the rest of the property should be distributed among his heirs.[1] (19) The property of Rahmat Ali, the _diwan-i-buyutat_, who died in 1668, was confiscated by the state officials on the ground that he died in state debt. On representation of his son-in-law to the royal court, the Emperor ordered that after deducting the debt and the salary arrears of the soldiers the remaining property be handed over to his sons.[2] (21) Pahar Singh, a Rajput _zamindar_ and _mansabdar_, who died in 1670 left behind nine _muhars_, one hundred rupees and two elephants. The Emperor ordered the confiscation of one elephant to the value of nine thousand rupees to adjust the state-debt and the return of the rest to his son.[3] (48) Lutfullah Khan, the governor of Berar, had a state debt of one lac and seventy thousand rupees. After his death in 1702, the heirs were permitted to inherit his entire property. But when the _naib-i mir saman_ made known his liability to the state, the property was taken back; the heirs were allowed to keep only horses and

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1. _Waqai-i Deccan_, p. 50.

2. _Akhbarat_, (R.F. No. 258), ff. 8th R.Y. ff. 14-15; _'Alamgir Nama_, pp. 297-99, 915.

3. _Akhbarat_, 13th R.Y. f. 27; _Futuhat-i 'Alamgiri_, f. 540.

elephants.[1] (30) In 1707 Abdul Baqi, a qil'adar, died leaving a property valued at one lac rupees. Some part of his property, particularly the cash, was embezzled by the local news reporter and state-officials. On complaint of the widow, it was ordered that after deducting state dues his property be given to his widow.[2]

There are three cases in which the property of deceased officials were escheated on the ground that they owed money to the state. But the entire property was restored to their heirs on their promise to clear the state-dues.

(24) Islam Khan, the governor of Malwa passed away in 1676 leaving three lac rupees, twenty thousand ashrafis in cash and some other property. As he has some state dues his property was to be escheated. But when his sons agreed to clear the state dues the entire property was entrusted to them without any deduction.[3] (35) After the death of Shaikh Muhiuddin, the sadr and amin of jizya of Gujarat in 1687, his son assured the authorities that he

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1. Akhbarat, 46th R.Y.; Maasir-i 'Alamgiri, p. 461; Maasir-ul Umara, I, pp. 171-172.

2. Akhbarat, 51st R.Y. f. 9.

3. Maasir-i 'Alamgiri, pp. 151-52; Maasir-ul Umara, I, pp 246.

would pay the state debt of his father. On this assurance he was allowed to inherit the property of his father.[1] (46) Rashid Khan, the diwan-i-Khalisa, died in 1701. The whole property of the deceased was given to his son on condition of paying the state debt of his father.[2]

There are seven cases (out of the remaining twenty eight cases) in which the property of the deceased officials was entirely returned by the imperial order to their heirs. But it appears that the property of the deceased was temporarily confiscated to ascertain their liability to the state. After they were declared to be free from any dues, their property was given to the heirs as may be shown from the detailed study of the cases. (9) Khan-i-Dauran Shah Beg Khan, the governor of Thatta, passed away in 1620, leaving the property to the value of four lac rupees. At the imperial order his entire property was entrusted to his four sons.[3] (10) Itimad-ud daulah, the grand wazir of Jahangir, died in 1621. The property left by the deceased was handed over at the instance of the Emperor to his daughter Nurjahan Begum

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1. Mirat, I, p. 319.

2. Akhbarat, 45th R.Y.; Maasir-i-'Alamgiri, p. 206; Maasir-ul-Umara, II, p. [illegible].

3. Tuzuk, p. 312. Maasir-ul Umara (II, pp. 642-45) mentions only two sons.

in spite of the fact that he had also left several sons.[1] (12) Saadat Khan, an imperial slave and incharge of the betel consumed by the Emperor, was put to death in 1644 for violating the imperial order that the betel should not be given to anyone else at the court. The Emperor gave his entire property to his Christian wife, the only surviving heir.[2] (14) Raja Bithaldas, the faujdar of Ajmer, passed away in 1651 leaving ten lac rupees. At the imperial order this amount was given to his four sons.[3] (23) Shaikh Abdul Wahab, qazi-ul quzat, who died in 1675, left behind two lac ashrafis, five lac rupees and certain other property. The government did not interfere with his property and permitted its distribution among his sons.[4] (28) Muhammad Sami', a soldier, died in 1680, leaving one horse and some other valuables. By the order of the Emperor his entire property was handed over to his heirs.[5] (45) Shujaat Khan, the governor of Ahmedabad,

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1. De Laet, p. 198; Tuzuk, pp. 339-40; Maasir-ul Umara, I, pp. 127-34. The Tuzuk, does not mention that the property of Itimad-ud daulah was given to his daughter.

2. Manucci, I, pp. 194-95.

3. Waris, I, p. 154; Maasir-ul Umara, II, pp. 250-56.

4. Khafi Khan, II, pp. 247, 438; Ma'asir-i-'Alamgiri, p. 148; Ma'asir-ul Umara, I, pp. 235-37.

5. Waqai-i Ajmer, p. 601.

died in 1701, and his heirs were allowed to distribute the property among themselves. The horses, elephants and other animals were however sent to the Royal court.[1] However, there is one case (36) from the reign of Aurangzeb wherein the restoration of the property of the deceased took place on the basis of the rule formulated by Aurangzeb that the property of those deceased officials whose heirs were in government service would not be escheated. Saiyêd Idris Khan, the _faujdar_ of Naryad (Gujarat), died in 1691. The provincial _diwan_ sent his officials to escheat the property of the deceased. On being informed, Aurangzeb issued instruction to the _diwan_ that the property of those officials whose heirs were in the government service should be confirmed on the heirs of the deceased officials.[2]

In the remaining twenty cases (Nos. 2, 3, 5, 6, 7, 15, 18, 20, 25, 31, 32, 34, 38, 39, 41, 42, 43, 44, 47, 49) we come across referencesto the escheat of property but no apparent cause for it has been given. The liability of these officials to the state is not mentioned. Only in few cases it is clear that heirs of the deceased were alive. However, on account of lack of information about the circumstances in

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1. _Mir'at_, I, p. 348; _Ma'asir-i 'Alamgiri_, pp.383, 447; _Ma'asir-ul Umara_, III, pp. 705-6.

2. _Mir'at_, I, p. 326.

which the property was escheated no definite conclusion can be drawn regarding these cases. Most probably the escheat could have been made on either of the two well-known grounds (i.e. dying heir-less or in state debt).

After the analysis of the cases of escheat we can say that the government usually confiscated the property of its officials after their demise. In the application of this rule no distinction was made on religious grounds. It appears that there was no hard and fast rule for the working of the system. The property of the deceased officials was escheated generally for two reasons. If he died heir-less or his heirs were not traceable his property was attached by the government permanently. But when the state had any claim to settle with him then his property was temporarily taken into government custody to settle the accounts.[1] In such cases of the escheat, either the entire property of the deceased was restored to his heirs, or after deducting the state-debt the remaining property was returned to the heirs.

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1. We have incidents on record wherein the government itself took steps to pay the uncleared private debts of the deceased officials. Akbar is reported to have ordered for payment of debts (amounting to one lac rupees) of Shaikh Muhammad Bukhari and Saif Khan (who had been killed in the battle of Patan and Ahmedabad respectively) from the state treasury. (Badauni, II, p. 171; Ain (Eng. translation) I, p. 160; Ma'asir-ul Umara, II, pp. 374-75). Sometimes the state also arranged for the burial of the deceased from its own fund in case he left no heir or his heirs were unable to do so. (Mirat, I, p.293).

The conclusion that the most important reason for the confiscation was the liability of the deceased to the state is substantiated by the fact that the property of the deceased was not touched by the state if his heirs took surety for payment of the state-debt or they happened to be the government employees.

There were various ways by which the government employees came under monetary obligation to the state. For extending loans to its official the Mughal rulers had run a scheme known as musa'adat[1] and appointed special officers to put it into effect. Whenever the state officials faced financial crisis they could avail themselves of the government's scheme of extending loans (musaadat) to its officials.[2]

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1. Musa'adat, literally meaning 'helping, assistance, aid', signified loan or advance of the pay given by the Mughal government to its officials. The mutaliba denoted the recovery of that loans and advances. Discussing the government's scheme for extending loans to its officials, the Ain states, 'High offic ers who get land or receive monthly salaries may occasionally come into difficulties and they are not allowed to ask for a present. For this reason His Majesty appointed a treasurer and a separate Mir Arz, and those who wish to borrow money may now do so without prejudice to their honour, or annoyance or delay, (Ain, I, p. 139). See also for details on musa'adat, Selected Documents of Shah Jahan's reign (ed. Yusuf Husain Khan) Hyderabad, 1950, pp. 66, 74, 78, 224; Isar Das Nagar, Futuhat-i-'Alamgiri, ff. 148a, 161b; Alamgir Nama, pp. 1062-63; Mirat, I, pp. 170, 234; Akhbarat, 40th Regnal Year, f. 30; 46th Regnal Year, f. 599; 47th Regnal Year, f. 155.

2. Selected Documents of Shah Jahan's Reign, pp. 66, 74, 78, 224; Futuhat-i-Alamgiri, ff. 148a, 161b; Alamgir Nama, pp. 1062-63; Mirat, I, pp. 170, 234; Akhbarat, 40th R.Y., f. 30; 46th R.Y., f. 599; 47th R.Y., f. 155; Maasir-i Alamgiri, pp. 514-15, 526.

Sometimes at the time of appointment or transfer they obtained their salary in advance and it was noted down in their records in form of a loan.

On the other hand the process of settling the account of an official with the state-treasury was so low that their exact dues and liabilities to the state remained uncertain even after his death. In such condition the government adopted the practice of confiscating the property of a deceased official to settle his accounts with the state-treasury. We have referred earlier to the numerous cases showing that after the debt was cleared the remaining property was restored to the legal heirs. Sometimes if the heirs took upon themselves the responsibility of paying the debt no interference was made with the property of the deceased.

However, from the rules and regulations laid down by the Mughal Emperors and their actual practices about the escheat of the property of deceased officials it does not appear that they ever laid claim to the ownership of the property of the state officials. The misconception that the Mughal officials were deprived of the right of ownership of their property has been mainly created by the European travellers whose account of the Mughal practice of escheat is itself contradictory and based on hersay, prejudice and ignorance about the Mughal institutions. Some European travellers stated that the Emperor claimed ownership of all the property left by his subjects in

general. Others confined the imperial claim to the property of nobles and state-officials and a few extended it to include the property of wealthy persons merchants and common people.[1] In spite of variation in their statements they were unanimous on the point that the Mughal Emperor claimed to be sole-heir of the property of his nobles and so escheated it after their death.[2] It is surprising that we do not get a single reference in their account to the fact that the property of the official was escheated due to his indebtness to the state, or because he died heir-less. Instead, they lay great stress on the emperor

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1. *Early Travels in India* (W. Hawkins), p. 104; Manoerrate, p. 207; Pelsaert, pp. 54-55; D Laet, p. 103; Bernier, pp. 111-12, 163, 167, 204; Norris, p. 288; Manucci, II, p. 392; *English Factories*, Oxford, 1913, Vol. VIII (1646-50), p. 7. Their observations also leave the impression that the Emperor used to confer on the widow and children of the deceased whatever they liked as a special favour to them. But at the same time they stated that after the death of a noble at least the grandsons, if not sons, were reduced to beggary because of the escheat system. Mostly the sons had to start his career on his own and no consideration of his father's position /was made in this connection./ (Bernier, pp. 11, 13, 111-12).

2. The opinion of some modern scholars on the nature of the escheat in Mughal India is also noteworthy. According to J.N. Sarkar (*Mughal Administrations*, Calcutta, 1972, p. 113). "The Emperor never claimed to be heir of any dead subject's property unless he died without having his personal issue or legal heirs." In the view of S.R. Sharma (*Mughal Government and Administration*, Bombay 1951, p. 63)." The emperor was the heir to all property for which no claimants were forth-coming." In the words of M. Athar Ali (*Mughal Nobility under Aurangzeb*, Bombay 1970, p. 67). "The escheat amounted in practice to only (a) that the state-dues should be the first claim on the estate of the deceased official and (b) that in disposing the rest of his property the king and not the *Shariat* should have the decisive voice."

being the heir of all his nobles. Thus the picture emerging from the European sources is very different from that which had been presented in the Persian sources.

That the Mughal Emperor never claimed ownership of the property of the state-officials or nobles is supported by the fact that the contemporary sources not only refer to the return of the deceased's property to his heirs but in relation to several deceased officials they have also given details about the distribution of their property among their heirs.

DIVISION OF INHERITANCE:

While disposing of the property of deceased persons there was no uniform rule, for in some cases the Islamic law of inheritance was adhered to and in others it was overlooked. The both kinds of example are available in the contemporary sources. After debiting the state dues from Islam Khan's property, (Case No. 13) Shah Jahan ordered that the rest should be distributed among his heirs strictly in accordance with the *Shariat*.[1] Mahabat Khan (Case No. 40) died in 1698 leaving only one grandson. The Emperor ordered the property of Mahabat Khan to be deposited in the *bait-ul mal*

1. Waris, *Badshah Nama*, Vol. I, pp. 16-17. No further details are available.

as the grandson was not legally authorised to inherit the property of his grandfather.[1] The possessions of Ali Mardan Khan (Case No. 16) were ordered to be distributed among his heirs but here the Islamic law was disregarded in the division of inheritance. He left behind four sons and ten daughters. Out of one crore rupees left by him, fifty lacs were paid to clear his debt. From the remaining fifty lacs, thirty lacs were given to Ibrahim Khan, the eldest son and twenty lacs were distributed among his three sons and ten daughters.[2] This unequal division of the property was obviously not in accordance with the Islamic law of inheritance.[3] After the death of Itimad-ud daulah (Case No. 10) his entire assets were handed over to his daughter, Nur Jahan Begum, by the imperial order and the sons of the deceased were not given the legal shares.[4] The property of Shujaat Khan (Case No. 48) was ordered to be distributed among his heirs. These who inherited him included one adopted son and one daughter.[5] The

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1. _Ruqaat-i 'Alamgiri_ (Letter No. 146), p. 39.

2. _Amal-i Salih_, III, p. 248.

3. Each of the four sons was legally entitled to Rs.55555.56 and each of the ten daughters to Rs.27777.78.

4. This is borne out only by the European sources (De Laet, p. 198). The _Tuzuk_ does not mention that his property was given only to his daughter.

5. _Maasir-ul Umara_, II, pp. 706-8.

former according to the Shariat was not entitled to inherit any share of the deceased's possessions, for in Islam an adopted son is not treated as a real son.[1] The property left by Raja Bithal Das (Case No. 14) amounting to ten lac rupees was distributed at the imperial order among his four sons.[2] It is sometimes maintained that the procedure of distribution was not in accordance with the Hindu law of inheritance.[3] Here it may be stated that as a matter of principle the Hindu law of inheritance as explained by Manu requires the equal distribution of property of a deceased father among his sons.[4] But it appears from the detailed clauses of the same source of law that there was no rigidity in maintaining the equal distribution among sons and that the eldest son was entitled to get additional share in view of his seniority and responsibilities.[5]

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1. Quran, IV:33, XXXIII:4.
2. Waqia, I, p. 154; Maasir-ul Umara, II, pp. 250-56. Out of ten lacs left by the Raja, 6 lacs were given to the eldest son, while the other three sons were conferred 3 lacs, 60 thousand and 40 thousand respectively.
3. M. Athar Ali, The Mughal Nobility Under Aurangzeb, p.64
4. The Laws of Manu (Eng.tr.G.Buhler) contained in the Sacred Books of the East, Delhi, 1964, Vol.XXV, p.345 (article no. 104).
5. Ibid, pp. 346-48 (article Nos. 109, 110, 112-118).

The entire property of Sa'adat Khan (Case No. 12) was entrusted by the order of Shah Jahan to his widow who was a Christian.[1] This was also a violation of the Shariat law of inheritance.[2] Out of the two and half crore rupees left by Asaf Khan in cash (Case No. 11), two crore and thirty lac rupees were escheated to the state and the remaining twenty lacs were given to his three sons and four daughters, but the details of distribution are not available.[3]

What is very clear in the above cases is the fact that sometimes in the distribution of the property the emperor's opinion and will played an important part and Shariat rules were disregarded.

Irrespectives of the fact that the distribution of the property among heirs of the deceased officials was in accordance with or against the Shariat, it cannot be disputed in view of the above discussion that the official himself, and not the emperor, was sole-owner of his property.

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1. Manucci, I, pp. 194-95.

2. One of the several causes for exclusion from inheritance in Islam is difference in religion. (al-Siraji, p. 4; Fatawa-i 'Alamgiri, IV, p. 406.)

3. Maasir-ul Umara, I, p. 158.

The fact that the common people were also considered owners of their property is established by different kind of documents like that of division of inheritance and sale-deed. But since the contemporary sources rarely discussed the problems of common people, so only few cases of their inheritance could be traced.

In a document of 1589 A.D. showing the division of property it is related that after the death of Darvesh Muhammad, his house was sold by his heirs (son, daughter and wife) to Shaikh Tajuddin Mahmud for Rs.30 and the sale-proceed was distributed among the heirs according to their legal share.[1] In 1645 Dost Muhammad, son of Saiyed Kamal and a grandson of Saiyed Dan died. His property was distributed by the *mufti* among his heirs according to the *Shariat*. He had left behind four heirs - wife, daughter, sister and brother. According to the advice of the *mufti* the property was divided into 24 shares. Out of which, 12 shares were given to the daughter, 6 to the brother, 3 each to his wife and sister.[2] In 1647 there was a dispute among the descendants of Saiyed Dan over the distribution of their inherited property. At the behest of the Emperor, the governor sent the *qazi* and

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1. *Asnad-us Sanadid*, pp. 20-21.

2. Ibid., pp. 206-7.

mufti along with the *qanungo* to distribute the disputed property (house and garden) among the claimants in accordance with the *Shariat*, and this was actually done.[1] In 1668, Saiyed Shah Muhammad died leaving behind a son, a daughter and a wife. The work of division of inheritance was assigned to the chief *qazi*. The property was divided and given to the heirs their allotted shares according to his judgement.[2] In 1667, Saiyed Mansur died and left a grant of 700 bighas of land. It was distributed among his heirs - two wives, five sons and three daughters in conformity with the *Shariat* law of inheritance.[3] In 1678, Saiyed Fazlullah represented to Aurangzeb that Saiyed Muhammad, the elder brother of the plaintiff had taken the entire property (one lac rupees and ten thousand *ashrafis*) left by their father and had deprived him of his legal share. The defendant was summoned to the court to give an explanation. Before going to the court he stated the case before Qazi Abdur Razzaq. According to him the entire property of his father was in possession of the

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1. *Asnad-us Sanadid*, pp. 196-97.

2. *Selected Documents of Aurangzeb's Reign*, pp. 49-50. It is noteworthy that the wife had appointed one Shaikh Abdur Rahim as her counsel to plead the case on her behalf.

3. *Asnad-us Sanadid*, pp. 243-44.

deceased's wife (the mother of Saiyed Muhammad, Saiyed Fazlullah and Saiyed Zain-ul 'Abidin). She spent some amount on the marriages of Saiyed Fazlullah and Zain-ul Abidin and some parts of it was spent on construction of a house for the same two brothers. The remaining property was also used by them. The defendant stated that he did not take even his legal share in consideration for his mother. So the allegation of the plaintiff against him was baseless. A document verified by the qazi was prepared supporting his statement and with that document he started for the royal court.[1] There is no reference as to what was done at the royal court about the case.

The above instances tend to suggest that the concept of private-proprietorship was not unknown in Mughal India. This is borne out by the fact that the property (movable or immovable) left behind by a person was generally shared by his legal heirs in accordance with the Shariah. In addition to the general instruction for the distribution of the property of a deceased among his lawful heirs, the emperors took special steps to check illegal practices in matters of inheritance. In some areas the tribal people followed their own customs in matters of division of inheritance. Once it was reported to Shah Jahan that people of certain tribes in Afghanistan used to give shares from the property of a deceased

1. Waqai-i Ajmer, I, pp. 24-28.

person only to sons and to deprive daughters altogether, and thus violated the *Shariat* rules of inheritance. The emperor ordered Lashkar Khan, the governor of Kabul, to take prompt steps to stop this illegal practice.[1]

Besides, there are some other documentary proofs which support the view that there existed private ownership at least in landed property (cultivable or habitable). We find one such proof in the sale-deeds. It is apparent from them that the people were vested with the right of transfer of their property which is one of the pre-requisite of private-ownership. We have discussed above that the house of Mir Darvesh was sold after his death by his heirs and the sale-proceeds was distributed among them.[2] In another case the co-owners of two houses are reported to have sold them to Shaikh Chandan in the presence of six witnesses.[3] It is evident from a sale-deed of 1651, that some non-Muslims sold twenty bigha lands to Dalair Khan in return for Rs.121.[4] A sale-deed of the same period states that Bindraban sold his

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1. Qazwini, *Badshah Nama*, II, pp. 356-57. See also *Asnad-us-Sanadid* (p. 179) for Shah Jahan's instructions to the officials for distribution of the inherited property among heirs according to the *Shariat*.

2. *Asnad-us-Sanadid*, pp. 20-21.

3. Ibid., pp. 23-24.

4. *Farmin-i Salatin*, (ed. by Bashiruddin), Delhi 1926, pp. 33-34.

garden comprising 15 bigha land and 100 mango trees to the agents of the state for Rs. 1000.[1] In this document too it was clearly explained that the garden was the property of the seller.

Another set of evidence which supports the view that the state recognised the private ownership is found in the documents referring to the acquirement of the private lands by the state. They reveal the fact that whenever the state required some private land for the public use it provided monetary compensation to the occupant of that land. In the reign of Aurangzeb it was decided to construct a mosque, some shops and a well in the Chauk of the town of Merata (a town in Jodhpur state). On the proposed site for construction there were houses of some non-Muslims. On their objection to the government's proposal for the said construction on their lands, they were persuaded to give their land in return for a reasonable price and they agreed to it.[2] In the same period when the gates of Delhi towards Lahore proved insufficient, an order was issued to erect three more gates at this place. To carry out the scheme several private buildings had to be knocked down. It was done after the state had paid due

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1. *Farmans of Jahangir, Shah Jahan and Aurangzeb*, Microfilm No. 260 (MS: National Library, Calcutta), Research Library, Department of History, AMU., Aligarh, ff. 257-60.

2. *Waqai-i Ajmer*, pp. 432-440.

compensation to the owners of those buildings.[1] In another case when the government decided to build a *sarai* in the Chowk of Aurangabad city, some jats protested and suggested alternative sites. They were asked to explain the cause of their protest. They claimed ownership of the land on which the *sarai* was to be constructed. Instead of ignoring their protest, the government gave them time to show proof of ownership of the disputed land.[2] It means the government agreed to accept their claim for the ownership, provided it was legally proved.

On the basis of the above discussion it seems unreasonable to accept the assumption of the foreign travellers that there was no private ownership in Mughal India. This assumption has no ground particularly in view of the above-mentioned evidence – cases showing the real nature of the escheat, inheritance of the property of a deceased person by his lawful heirs and the right of transfer of property through sale.

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1. Manucci, II, p. 118.

2. *Waqai-i Deccan*, pp. 50-51.

Chapter IV

THE COMMERCIAL LAW

The Mughal India witnessed a great development in inland and foreign trade. It was an established policy of the Mughal Emperors to encourage merchants and give incentive to trade. They frequently took administrative steps to promote trade and provide facilities to merchants, especially of the foreign countries. They were allowed not only to carry on their trade within the Mughal territories, but were also provided protection from molestation and harassment at the hands of the state officials. Sometimes special officers were appointed by the Emperor to look after their interest. In a reply to a letter of King James I of England (1603-1625) seeking permission for English merchants to trade with India, Jahangir wrote, "He has received with delight the king's letter of friendship and the presents which accompanied it, and has now issued orders that the English merchants be given freedom and residence and that none of his subjects shall injure or molest either them or their ships and goods. The care of this matter has been committed to Asaf Khan who has been instructed to grant the English all their desires."[1] An agreement concluded between the Mughal authorities and the

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1. English Factories, I (1618-21), Oxford, 1906, pp. 38-39. See also Letters Received by the East India Company from its servants in the East, London, 1896, I, pp. 73[illegible]-7[illegible].

representative of the English at Surat in 1623 also ensured that the movement of the English *qafilas* would not be hindered in any way and on any pretext.[1] When the agreement was renewed in 1624, the same points were again emphasised.[2]

By the commencement of Shah Jahan's reign, the Portuguese, the Dutch and the English companies had established their trading centres and fully availed themselves of the freedom and facilities of trade granted by the Mughal government. There had been no change in the general policy of the state in this period towards the foreign merchants, but their mutual rivalries and confrontations themselves created hurdle for them and led to hamper their commercial activities. The Dutch who had already established their factories at different places got more encouragement from Shah Jahan.[3] The emperor also granted

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1. *English Factories*, II (1622-23), p. 310. Though the English were not allowed to buy or construct a building, but they could hire it for a factory or residence. (*Early Travels*, p. 72; *English Factories*, I (1618-21), p. 160.

2. *English Factories*, III (1624-29), Oxford, 1909, pp. 27-28.

3. In a *farman* issued in the name of the Chief Dutch factor at Agra dated 13 August, 1633, he assured the Dutch of all possible assistance and protection against oppression and injustice (Letters (Dutch) Vol. IX 1629-34, p. CCXVI, vide Abu Khair Muhammed Farooque, *Roads and Communication in Mughal India*, Delhi, 1977, p. 185).

commercial concessions to the English merchants trading in India.[1] If any complaint was lodged with him about any unjust treatment of the officials to them he took effective steps to remove their grievances. A farman of Shah Jahan issued to the mutasaddi[2] of Mumtazabad (Akbarabad) on 3 November 1637 says, "It has been represented to the emperor that the English merchants frequenting to the ports of Surat and Broach pay there the customary duties and that they held a farman from his majesty to the effect that no one shall make any other demand in respect of their goods in place. Now the mutasaddi of Mumtazabad demands the same payments from them on their goods brought from and taken to purab (Bengal and Bihar). Order is therefore given to those and other officials not to molest the English for duties and other payments on their goods."[3] By a farman of Shah Jahan dated 11 August 1650 clear instructions were given to the administrative officers to provide all kind of facilities to the British merchants and abstain from

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1. English Factories IV (1630-33), Oxford, 1909, p. 158; (1634-36), p. xxxvi (Introduction).

2. Mutasaddi (Superintendent of port) was fully responsible for the affairs of ports. But in important matters he could not act on his own, and to consult the governor.

3. English Factories, Vol. X (1655-60), Oxford, 1915, p. 413.

harassing them.[1]

The policy of providing necessary facilities to the foreign merchants for the encourage of trade and commerce continued in the time of Aurangzeb. In a *farman* addressed to the government officials, Aurangzeb laid great emphasis on provisions for transport facilities, monetary assistance and fair dealings towards the Dutch. The *farman* laid down that the Dutch shall be at liberty to engage as many carts, beasts of burden, *caravans* etc. as they require for transport of their goods. The money given by them as deposit would at once be restored after the execution of the contract and they need not accept guarantees for the same; the governors must assist them in recovering their debts and protect them against injustice. For the better observance of the King's decrees the governor should send a responsible person in authority to accompany them on the way.[2]

The similar *farmans* of Aurangzeb were issued in favour of the English merchants granting them certain privileges and concessions and ensuring just treatment towards them.[3] He is

1. Ibid., pp. 414-15.

2. *Majmua-i Faramin*, ff. 18a-b.

3. *Majmua-i Faramin*, ff. 18b-19a; *English Factories* XII (1665-67), pp. 272-74.

also reported to have permitted the English to appoint their representative at the court to take care of their interest.[1]

Here it may be mentioned regarding all documents issued by a Mughal emperor granting concessions and privileges to merchants that as a rule they were required to be renewed after his death by his successor. Writing to directors of the Company at London, Francis Breton (an English factor) writes, "Alder, having been to court to congratulate the new King (Shah Jahan), managed in this way to procure the renewal of most of the company's former privileges."[2] The English factors knew very well the ways and means of obtaining confirmation of privileges and concessions granted by early Mughal rulers. "This new King Orangzeebe" wrote a factor, "expects a mubarika (mubarak) or a congratulating of his coming to the throne of his yett living father, and therefore we intend Mr Forster (one of the Councell now) upp whether with a fittinge present and instruction to confirm former agreements and privileges and to require some others that are ventinge."[3]

The death of a governor also invalidated his order concerning reduction of custom duty or other trading facilities

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1. English Factories, XIII (1668-69), Oxford, 1927, p. 181.
2. Ibid., VII (1642-45), p. 135.
3. Ibid., X (1655-60), pp. 214, 373.

which had to be confirmed by his successor or the emperor. An English factor at Kandiaro (Thatta) wrote to Surat Presidency, "The death of the governor has invalidated the dastak[1] he gave us for freeing us from the irksome duties of water rawdaers (rahdari, transit duty): which at our coming forth we got renewed, being, that some of the officers of the Ghaat began to trouble our boatmen. See if our goods goes downe before a new governor arrives, it will receive much perturbation."[2] The death of Mir Jumla in 1663 necessitated the renewal of the parvanas[3] issued by him in favour of the English merchants. An English factor wrote, "some few days came hither letter per the dogchowky from Deckan (Dacca) to the Nabab of this place, Dowell Caun (Daud Khan), and are dispeeded forward to the king intimating the death of Meerjumla whose phirwana (parvana) by which we act all the Honourable companies affairs, both here and in Bengall, will now be of no effect for us. So that we very much fear, if we have not this new kings phirmaund (farman) (as well as the Dutch have). Suddenly, we shall scarce be suffered to carry on our master affairs without excessive trouble and the paying of customs,

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1. An official permit, generally used in reference to the transit of goods.

2. English Factories, VIII (1646-50), p. 120

3. An administrative order to a subordinate official.

every petty governor already taking occasion to demand it of us."[1]

There are enough materials in the contemporary sources specially the European ones that under the Mughals not only rules existed for safety of the traders and security of their merchandise, these rules had also the force of law as they were acted upon.

Arif Qandhari informs us that in the early years of Akbar's reign merchants from different parts of the world came to trade with India. With routes safe and many concession granted to them, they were happy to carry on their commercial activities in the country.[2] William Finch who visited India during the early seventeenth century (1608-11) found many police posts on the important routes, preventing highway robberies and attending to the welfare of travellers and merchants.[3]

In spite of all these precautions, if the traders were robbed on the way, the administrative officers (under whose

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English Factories, XI (1661-64),
1. ~~Ibid., XI, p. 788.~~

2. Arif Qandhari, *Tarikh-i Akbari*, Rampur, 1962, pp. 38-39.

3. *Early Travels*, p. 144.

jurisdiction this happened) were required to make good their loss. They had either to recover the stolen goods or had to pay compensation for it.[1] Protection of trade-*caravan* (*qafilas*), merchants and travellers and prevention of robbery and all kind of harassment was primarily entrusted to *Kotwal*, *faujdar*, *zamindar* and *jagirdar*. An important function of the *kotwal* enumerated in the '*Ain* was the patrolling of streets of the city at night and to take care of the safety of life and property of the citizens. To apprehend the robbers was also included in the duties of the *kotwal*. If he failed to restore the robbed goods to its rightful owner, he was held responsible to compensate the loss.[2] Thevenot, a 17th century traveller confirms the '*Ain* when he says that *Kotwal* had to patrol the streets of the town at night to prevent theft and robbery. He was answerable for all robberies committed in his jurisdiction

1. There are several references in the contemporary documents and records to the rule that the local officials would be held responsible for recovering the stolen or robbed goods of a trader and in case of failure they were to compensate for the loss. (*Majmua-i Faramin*, Rotograph No. 186 (MS: Bod. Library, 228) Research Library, Department of History (A.M.U., Aligarh) ff. 18b-19a; *Akhbarat*, 25th R.Y. f. 282; 45th R.Y. f. 66; *English Factories*, XII (1665-67), Oxford, 1912, pp. 272, 414-15; Manucci, II, p. 423.

2. *Ain*, I, p. 198.

and was liable to make good the loss.[1] Reinstating Ateequllah Khan on the post of *faujdar*, Aurangzeb had four conditions for the service. One of them required that he must make the boundaries of his jurisdiction free from robbers and fully safe, so that the travellers, merchants and traders could travel without any anxiety.[2] Through a *farman* issued in 1659 the emperor assured the English, if they were robbed, the *jagirdar* would make effort to recover their goods.[3]

Apart from these administrative regulations about the security of the merchandise there is ample evidence to show that the traders actually received compensation for the loss they suffered at the hands of robbers. An English *caravan* going from Agra to Surat during the reign of Jahangir was robbed. The *caravan* suffered the loss of fourteen churles[4]

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1. Thevenot, pp. 27-28; Manucci, II, 423.
2. *Ruqa'at-i 'Alamgiri* (Letter No. 94) p. 26.
3. *English Factories* Vol. X (1655-60) pp. 414-15.
4. The Churl was a unit by which indigo was generally bought. It is often termed by the factors as a bundle. The greater Churl was a little over five maunds in weight and the smaller one about four maunds (*English Factories*, I (1618-21), p. 60n).

of Bayana indigo. On representation by the English merchants, Prince Khurram (the governor of Gujarat) ordered Abdur Rahim Khan Khan Khanan[1] to compensate the English traders for the loss of their indigo.[2] Robert Sherely and his company arrived at Lahri Bandar in 1613 to start their trade in India. The Portuguese, who were already settled there, conspired with the port governor to drive them out of the country. At their instance Sherely and his companions were molested and stripped of their goods. Their house was also burnt. Sherely came to the Court and informed Jahangir of the incident. The emperor ordered the imprisonment of the governor and the sack of his house. The Portuguese escaped the punishment as they had abandoned the town. The emperor bestowed upon Sherely twelve thousand rupees in cash and jewels worth six thousand rupees.[3] Some miscreants

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1. Abdur Rahim, son of Bairam Khan held in turn the governments of Jaunpur, Multan and Sind and was at this time incharge of the operations against the Deccan provinces.

2. *English Factories*, I (1618-21), pp. 59-60, 81-91, 120; II (1622-23), p. 101.

3. *Letter Received*, II, pp. 156-7. The amount given to Sherely was apparently to compensate for his loss. He was not satisfied and demanded one lac rupees. But the king refused to concede to it as he considered the demand unreasonable.

looted a Dutch factory at Surat in 1645. On report of the Dutch factor the governor took no action. The Dutch then blocked the port of Surat and demanded a heavy indemnity for their loss due to the robbery. On being informed of it, Shah Jahan ordered payment of the compensation to them from the state-treasury and instructed the governor to replenish the sum to the state-treasury.[1] When an English caravan was robbed near Mathura in 1650, the emperor ordered the governor of the province to recover the goods, otherwise he himself would have to compensate the English traders.[2]

It was reported to Aurangzeb that Prince Muhammad Azam, the governor of Ahmedabad, took no action against Janaji Dalve who had plundered some foreign merchants on the Surat highway. The prince clarified that the robbery had occurred within the jurisdiction of Amanat Khan (faujdar) and so he was not responsible for it. The emperor ordered that ranks of the prince be reduced by five thousand for negligence in his duty and the loss of the merchants be made good by his agent.[3]

It is evident from a number of references in the sources that the Mughals had also made provision for giving loans to the merchants and traders. The English factor at Surat informs us that Mir Musa, the governor of Surat, granted a loan of thirty thousand rupees to the English merchants in 1637.[4] In another case relating

1. Manucci, II, pp. 196-97; English Factories, XII (1642-45), p. 272.
2. English Factories, VIII (1646-50), pp. 300-1.
3. Ahkam-i 'Alamgiri, p. 30.
4. English Factories, VI (1637-41), p. 193.

to Thatta it is stated that the factors faced there the problem of the shortage of money because they had to make regular payments to the state treasury in satisfaction of the advanced money granted to them.[1] There are recorded some other cases in the foreign accounts which also elaborate the same point.[2] The usefulness of such provisions for the commercial purposes apart, it is important to note here that in the available cases about the grant of loan to the merchants no reference is made to the realisation of interest from them. So it may be inferred that the loan was interest-free.[3] But it cannot be overlooked that in the same period we find the flourishment of a professional class of money-lenders (sahukar, mahajans and sarrafs) who usually lent money for usurious gains. The members of ruling class, merchants as well as the common men obtained loan from them to meet their requirements and obviously they repaid it with interest. It appears that the Mughal government took no steps to stop this illegal practice or to prevent the money-lenders from carrying on their business. Here, the influence of the established custom and the local practices is clearly visible

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1. Ibid, VIII (1646-50), p. 72.
2. Ibid, IV (1630-33), pp. 324-25; VI (1637-41), p. 100; VIII (1646-50), p. 72.
3. The well-known schemes of taqavi and musa'adat also worked during the Mughal rule for giving money in advance to the peasants and state officials respectively and there is no evidence to suggest that any interest was charged from those persons who availed of those schemes. For references to the taqavi see Ain, I, p. 198; Amal-i Salih, I, p. 242; Farhang-i Kardani, (MS. Aligarh: Abdussalam, Farsia, No. 85/3) f. 35b and for the musaadat see Ain, I, p. 139; Selected Documents of Shah Jahan's Reign, pp.48,66,224; Futuhat-i Alamgiri, ff.148a, 161b; Waqai-i Ajmer, pp.22,514-15,558; Akhbarat 40th R.Y., f.30. Regarding the musaadat the Ain makes additional point that from the second year of granting the loan an extra amount (afzuni) was begun to be added to the principal till the end of the tenth year and that it was collected along with the principal at the time of repayment.

COMMERCIAL TAXES:

The commercial taxes were included among the sources of the state revenue from the very early period of Islam. The origin of custom duties on merchandise known as *ushur*[1] is traced back to the reign of 'Umar, the second caliph (634-44 A.D.). Initially it came to be levied from the non-Muslim merchants trading in the Muslim countries after the report of Abu Musa al-Ashari, the governor of Kufa, that tax of ten per cent was being realised from the Muslim merchants in foreign countries.[2] Gradually, the tax came to be levied from the Muslims and non-Muslims both with variable rates, viz. 10 p.c. for the people of *dar-ul harb*, 5 p.c. for *zimmis* and $2\frac{1}{2}$ p.c. for Muslims. It was charged annually: so a

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1. *'Ushur* (pl. of *'Ushr*) literally means tenths or tithe. tribes. It was applied to customs duties as they were originally levied at the rate of 10 p.c. Its use in plural form was apparently to distinguish it from the tax levied exclusively from the Muslims on land produce. In Pre-Islamic Arabia the tithe was also collected from the merchants passing through Mecca and Madina and this was known as *makus* (pl. of *Maks*, meaning custom duty). Jurji Zaidan, *Tarikh-i Tamaddun-i Islam*, Karachi, 1964, p. 291.

2. On the report of the governor, Caliph 'Umar had directed him to levy the same charge from the foreign merchants trading in the Muslim countries. (*Kitab-ul Kharaj*, p. 135). When the Christians of Manbaj (a place in Syria, now called Heirapolis) requested the caliph to allow them for trading in Arabia and they offered to pay the *ushur* he conceded to their request (Ibid.).

merchant after paying it once was free to transport his goods any where within the year without any extra payment. The merchandise costing less than two hundred was exempted from the duty. Only the declared articles were subject to duty and no search of a person's belongings was permitted at the check posts.[1]

During the Muslims rule in India, the customs charges and port duties were included in the regular sources of state revenue. But the terms used by the chroniclers to denote the customs were not uniform but variant. The word *zakat*, originally denoting a purely religious tax payable by the Muslims only, was indiscriminately used in the Mughal India for custom and transit duties realised from both the Muslims and non-Muslims. Though during the Delhi Sultanate the word *zakat* was mostly used in its original sense but sometimes it denoted certain taxes on merchandise also. In

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1. *Kitab-ul Kharaj*, pp. 132-33. During the Umayyd and Abbasid Caliphate, the same regulations were followed. It is related that custom duty was levied from the ships (loaded with merchandise) passing through their frontier towns. It was collected in cash or kind. In the reign of Wasiq Billah, the Abbasid Caliph (842-47 A.D.), the revenue collectors of Yaman used to realise the duty in kind at the rate of 10 p.c. from the Indian ships which passed through their frontiers with *Ud*, *Sandal*, musk, cinnamon, camphor and amber (Jurji-Zaidan, pp. 290-91; al-Qalqashandi, *Subh-ul A'sha*, Cairo, 1913, Vol. III, p. 263.)

Futuhat-i Firuz Shahi and *Sirat-i Firuz Shahi*, the *zakat* (in the sense of a religious tax) is listed in the legal sources of state revenue and the term *'ushur* had been used for custom or transit duties.[1] But some chronicles of the period apply the term *zakat* to the transit dues only.[2]

In Mughal India the *zakat* remained as obligatory tax on the Muslims but it was not collected officially and the term was rarely used in this sense in the contemporary chronicles, imperial *farmans* and official documents.[3] In the official records of the Mughals the term *zakat* signified custom and transit duties. Some other terms such as *ushur*,

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1. *Futuhat-i Firuz Shahi*, Aligarh, 1954, p. 6; *Sirat-i Firuz Shahi*, (Anonymous). Rotograph, No. 168 (MS: Bankipur, XIII, 547) Research Library, Department of History (A.M.U., Aligarh), f. 124.

2. Shams Siraj Afif, *Tarikh-i Firoz Shahi*, pp. 374-75, 449; Ainuddin Mahru, *Insha-i Mahru*, (ed. Abdur Rashid) Aligarh, (undated) pp. 182-83. Discussing the abolition of transit dues by Muhammad Tughlaq, Ibn Batuta has used the word *maks* for the same. (*Rahla*, Cairo, 1288 AH., Pt. II, p. 151).

3. During the reign of Firuz Shah the *zakat* was included among the sources of state revenue, but there is no evidence to show that it was ever collected and distributed by official agencies.

baj,[1] tamgha,[2] Chahaldo & Chahal yak were often used indiscriminately in the same sense. Moreover the use of the different terms by the Persian chroniclers to describe the same tax has created the impression that they were used synonymously.

The terminology for the custom duties apart, these were generally charged at the ports and frontier towns from the merchants entering from outside. The rate of demand under this head did not exceed 2.1/2 per cent during Akbar's

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1. It originally meant 'tribute' taken by a king from another, but in Mughal India it signifies a toll or tax levied by the road patrol. In the opinion of Jarrett this was identical with the word tamgha. He states that the two are in several instances found coupled together when remission of taxes are mentioned, and perhaps they were thus employed to express all cesses of whatever kind over and above the land revenue. (Ain, (Eng.tr.), II, p. 367, n.1.) See also H. Elliot, Memoirs on the History, Folklore and Distribution of the Races of the North-Western Provinces of India, London, 1869, II, p. 226.

2. Tamgha, literally meaning a royal seal or stamp, signifies custom duty on imported or exported goods, (Farhang Anand Raj, Kutubkhana-i Khayyam, Tehran, Vol. II, pp. 1187-88). In the words of Abul Fazl, "In every kingdom the government taxes the property of subjects over and above the land revenue and this is called Tamgha' (Ain, I, p. 2?5). The same author uses the term tamgha at several places in the meaning of inland tolls (Ain, II, p. 193; Akbar Nama, III, p. 296). See also Badauni, II, p. 276. In the opinion of Erskin (as quoted by Jarrett, Ain, (Eng. Tr), II, p. 410, n.1) "The Tamgha signifies the stamp tax. All animals, goods, cloth, etc. brought into the country are stamped and marked and a tax collected." Elliot Memoirs, pp. 4,9) has discussed baj, tamgha and other terms, but has not determined their specific fiscal significance.

reign.[1] According to Abul Fazl, the total sum collected from various cesses and duties, before they were abolished exceeded the income from land revenue of the country.[2] Nizamuddin Bakhshi and Faizi Sirhindi loosely stated it to be equal to the revenues of Iran.[3] In Badauni's estimate the money realised from the customs and *jizya* collectively amounted to few crores.[4]

In the reign of Jahangir the customs continued to be realized from the merchants at the rate of 2½ per cent. In 1615 Jahangir ordered that the duty should not exceed two and a half per cent.[5] This order concerned to the port of Cambay. It appears from Finch's account (1608-11) that at the post of Surat the duty was realised at the rate of 2½, 3 and 2 per cent for goods, victuals and money respectively.[6] There are, however, some references of the later years of Jahangir's

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1. *Ain*, I, pp. 144-45, Yusuf Mirak (*Mazhar-i Shah Jahani*, Karachi, 1962, p. 186) also mentions the same rate about Akbar's reign with special reference to Thatta.

2. *Akbar Nama*, III, pp. 295-96.

3. *Tabaqat-i Akbari*, Vol. II, p. 247; Faizi Sirhindi, *Akbar Nama*, Rotograph No. 163 (MS. Br. Mus. Or 169) Research Library, Department of History (A.M.U.), f. 50a.

4. Badauni, II, p. 276.

5. *Tuzuk*, pp. 206-7.

6. *Early Travels*, pp. 134-35.

reign which suggest a higher rate. According to an agreement made between the Mughal authorities and English merchants in 1612, the latter were required to pay customs at the rate of 3½ per cent.[1] Pelsaert also states about Surat that the duty on all exports and imports was taken at the rate of 3½ per cent.[2]

In the reign of Shah Jahan two and a half per cent is stated to have been the general rate at Multan for goods sent to Qandhar or Thatta.[3] While at Surat the merchants individually charged 4 to 5 per cent, the English and the Dutch companies were required to pay the duty at a lesser rate.[4] During his governorship of Bengal (1634-67), Shuja had permitted the Dutch to trade in Bengal and had imposed a duty of 4 p.c. on all their imports and exports.[5] It is however evident from a farman of Muhammad Shah that in the reign of Shah Jahan the English merchants were liable to pay only 2

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1. The Embassy of Sir Thomas Roe, p. 156; Purchase, IV, p. 125.

2. Francisco Pelsaert, The Remonstrantie Eng. tr. P. Geyl & W.H. Moreland: Jahangir's India, Delhi, 1972, p. 42.

3. English Factories, IV (1630-33), pp. 135-36.

4. Tavernier, p. 5. But according to Tavernier the difference in rate did not amount to much as the companys had to give presents to officials.

5. Letters (Dutch) Vol. XV (1645-47) CCLXXIV., vide A.M. Farooque, op.cit. p. 186.

per cent.[1] During the reign of Aurangzeb the administration of the custom duties was systematised and adjustments were made in their rates. It also appears that an attempt was made by the Emperor to reconcile it with the Islamic system of taxation.[2] By Aurangzeb's *farman* issued in the 8th regnal year (1666-67) the official rate of the custom duties was fixed at 2½ per cent in case of Muslims, 3½ per cent for Christians and 5 per cent for Hindus.[3] Tavernier and Thevenot stated that the levy on the Christians was increased to 4 p.c.[4] There are several references in the contemporary sources which suggest that the custom duty was actually collected at the prescribed rate in his reign.[5] It is to be

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1. *Majmua-i Faramin*, f. 23a.

2. Aurangzeb had ordered the revenue officials to report to Qazi Akram the amount realised from the Muslims and non-Muslims in custom duty. (*Akhbarat*, 46th Regnal Year, f. 38). It may be also mentioned here that Aurangzeb, keeping in view the Islamic Law, had exempted from the custom duty all goods were below the value of fifty two and half rupees (*Mirat*, I, pp. 258-59).

3. *Mirat*, I, pp. 258, 261, 263-4, 324; *Mirat* (Supplement) pp. 179, 182-83. The *Mirat* (Supplement) fixes the duty for the *harbi* (people belonging to the *darul harb*) as 4 per cent (Ibid, p. 183).

4. Tavernier, p. 8; Thevenot, III, p. 233.

5. Khafi Khan, II, pp. 229-30; *Durrul Ulum*, ff. 59b; *Akhbarat*, 26th Regnal Year, f. 10a; *Majmua-i Faramin*, ff. 18a-b, 23a-b; Manucci, II, p. 39; *English Factories*, XII (1665-67), pp. 72-73. It is interesting to note that the Dutch were required to pay to the English the custom duty at the rate of 2½% at Fort St. David which was under occupation of the English (Manucci, III, pp. 381-82).

noted here that the above prescribed rate was in conformity with the *shariat* in case of Muslims and Hindus both (if treated as *zimmis*). But in case of the *harbis* and Christians the situation was different.[1]

In the eighth year of his reign (1666) Aurangzeb abolished custom duty totally in case of Muslim merchants for sometime,[2] but reimposed it in the 25th regnal year (1683-84) when it was discovered that some Muslims merchants were passing off the merchandise of the non-Muslims as their own, so causing great loss to the exchequer.[3] Alexander Hamilton, who visited Surat about 1690 observed that the custom on the goods of Muslims was charged at the rate of 2 per cent and on that of Christians and Hindus at 3½ and 5 per cents respectively.[4]

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1. In case of the Christians, it should have been 5% (provided they were treated as *zimmis*) and 10% in that of *harbis* as explained earlier.

2. Khafi Khan, II, pp. 229-30; *Mirat*, I, pp. 265-66; *Durr-ul Ulum*, f. 59b; *English Factories*, XII (1665-67), p. 286; p. 49; Manucci, II, p. 389.

3. Khafi Khan, II, p. 230; *Mirat*, I, pp. 298-99; *Durr-ul Ulum*, Rotograph No. 186 (MS: Bod. Library, 184) Research Library, Department of History (AMU., Aligarh), f. 60a; *English Factories*, XIII (1668-69), p. 49; Manucci, IV, p. 389.

4. A. Hamilton, *A New Account of the East Indies* (ed. W. Foster) London, 1930, p. 371.

From the beginning of his reign, the fixed rates for *zimmi* and *harbi* were not only less than what had been prescribed by the Islamic law, they were further reduced by the Emperor in 1667 to encourage the merchants and to give incentive to the trade. Aurangzeb reduced the duty from 3½ per cernt to 2 per cent for the Dutch and the French merchants, and, later on at the representation of the English merchants, the reduction was extended to them as well.[1] Sometimes later the English merchants were granted total exemption from the payment of duty in majority of the ports.[2]

Regarding the rules guiding the mode of assessment of the customs duty, all our sources are unanimous that it was fixed according to the value of the merchandise.[3] Several methods of evaluating the goods have been recorded in foreign accounts. It was done either in the light of the inventory attached with the imported merchandise or on the basis of their value fixed at the place of embarkation. Ralph Fitch, who

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1. *Majmua-i Faramin*, ff. 18a-b; J. Bruce, *Annals of the Honorable East India Company* (London, 1810), p. 216; *English Factories*, XII (1665-67), pp. 272-74; XIII (1668-69), pp. 35, 116, 228.

2. *Majmua-i Faramin*, ff. 18a, 19a.

3. There is however one reference in the *English Factories* (VII, 1642-43, p. 55) which suggests the fixation of duty on merchandise according to its weight.

visited India during Akbar's reign informs us that the duty was levied on merchandise according to its value fixed in the light of the current prices.[1] About Jahangir's reign Pelsaert says that evaluation of goods on the basis of their current prices was the determining factor in fixing the customs duty on them.[2] The same rule was also emphasised and acted upon during Shah Jahan's reign.[3] The contemporary sources-Persian as well as European - are unanimous that under Aurangzeb customs were charged from the merchants after ascertaining the prevalent value of their goods.[4] In this reference the established practice for evaluating the goods at the port of Surat was that the governor used to call the chief merchants of the town or his representative for consultation in fixing the price of imported goods, especially when there was any difference of opinion between the port officers and foreign merchants.[5] At some ports the current prices of main items of imports and exports were noted down in a rate book to help in the assessment of the custom duty.[6]

1. Early Travels, p. 17.
2. Pelsaert, p. 43. See also Purchas, IV, p. 126.
3. English Factories, V (1635-36), p. 244, VI (1637-41), p. 136.
4. Khafi Khan, II, pp. 229-30; Mirat, I, pp. 258, 262, 304, 318; English Factories, XI (1661-64), pp.314-15; XII (1665-67), pp. 272-74.
5. Early Travels, pp. 10, 127.
6. Ibid., p. 10; English Factories, VI (1637-41), p. 136.

There are some other rules worth mentioning in connection with the custom duty. The Islamic law of taxation, as stated above, imposed the duty only on open articles of trade, and no search of a merchant's baggage was permissible. In Mughal India the same rule was followed generally, though certain modifications were introduced to do away with administrative problems. On the complaint of some people of Gujarat that their sedans, conveyances and vehicles (in which they travelled with their families) were being searched and their boxes opened by the custom officials to discover any thing liable to duty. Aurangzeb issued orders prohibiting this practice.[1] If the customs officers doubted the declaration of any merchant regarding the quality of his goods which were packed and bound they were authorised to open them, provided there was no damage in opening them. But if it was to cause decay of the goods, the officers were required to accept the declaration of the merchant on oath.[2] Once a youth killed a custom official on latter's insistence to search the cart (in which he was travelling with his wife) on suspicion that tobacco was being smuggled in it. On being informed of the incident Aurangzeb pardoned the youth.[3]

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1. <u>Mirat</u>, I, p. 287.

2. Ibid., pp. 299-300.

3. Manucci, II, 176. Aurangzeb had prohibited the use and import of tobacco.

frequent complaints of the foreign merchants are on record that they had to undergo a thorough search of their person and baggage at the custom houses. Tavernier states, "custom officials at Surat are very strict and search persons with great care."[1] Thevenot writes about the same port, "As soon as a ship comes to an anchor at the Bar (Surat) the master is obliged to go ashore in his boat and acquaint the custom-house with his arrival, and presently he is searched from head to foot."[2] The strictness of the custom officials while searching the traders' belongings, apparently a deviation from the established rule, had become necessary in view of the attempt of the merchants to evade the customs and their indulgence in smuggling and cheating. This is being supported by the accounts of the foreign travellers themselves. Describing the dishonest practices of the English merchants, Tavernier states, "that those dealing in gold are so cunning in concealing it that little of it comes to the knowledge of the custom-officers. They do all they can to evade paying the customs."[3] Thevenot has also recorded the merchants' attempt to cheat the port officers

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1. Tavernier, I, p. 8.
2. Thevenot, p. 2.
3. Tavernier, I, pp. 10-12.

and smuggle goods into the country.[1] Thus their own account affirm that the Europeans successfully evaded the customs. But in spite of all their cleverness, they were sometimes caught red handed and punished. The punishment was not always lenient. According to Tavernier if the merchants were found indulging in the practice of evading the customs they were charged double the scheduled rate of the customs.[2] But Fryer tells us that corporal punishment was meted out for evasion and smuggling.[3] Sometimes pecuniary punishment was also given to the smugglers. Muizz-ul-Mulk, the governor of Surat, is stated to have stopped the payment of debt to the English merchants as a penalty for smuggling quick silver in the country.[4]

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1. Thevenot writes, "And, indeed, they have a mind to conceal anything, and defraud the custom house, order their affairs more truely, they stay not till they come to Surat, there to beg the assistance of their friends. I have known some bring in a great many precious stones and other jewels, which the officers of the customs house never saw, nor got one farthing by." (Thevenot, p. 3. See also <u>The Embassy of Sir Thomas Roe</u>, p. 405; <u>English Factories</u>, IV (1630-33), pp. 153, 54, 116-187).

2. Tavernier, I, p. 110.

3. Fryer, I, pp. 247-48.

4. English Factories, V (1634-36), p. 83.

Apart from the customs collected from the merchants at the ports and frontier posts, inland transit duties or tolls were also charged on merchandise when it was carried from one part of the country to another, by roads or by the boats plying in the rivers and canals. The terms used for transit duty levied on land routes varied from place to place but the most popular was _rahdari_ (fee for guarding roads). It was actually demanded by the local officers and chiefs (e.g. _jagirdar_, _zamindar_ or _faujdar_) in return for an escort provided by them to the merchants while travelling within their jurisdiction.[1] The autonomous chiefs also realised the same duty from the merchants passing through their states.[2]

The rate of demand under the _rahdari_ was not usually high, though it was fixed variably from place to place. The _Ain_ which gives a detailed account of river toll[3] (_mir-i bahri_)

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1. _Ain_, I, p. 198; _Tuzuk_, p. 4; _Mazhar-i Shah Jahani_, pp. 171-72, 186; Qazwini, III, pp. 509-10; _'Alamgir Nama_, I, pp. 436-37; Khafi Khan II, pp. 89-90; _Ma'asir-i Alamgiri_, pp. 530-31; _Mirat_, I, p. 249; _Durrul Ulum_, ff. 38a-68; _Akhbarat_, 46th R.Y. ff. 145-46.

2. _English Factories_, IX (1651-54), p. 114; Peter Mundy, _Travels in Europe and Asia_, the Hakluyt Society, 1914, II, p. 40.

3. _Ain_, I, p. 162. The _Ain_ gives the following river toll: For every boat, 1R. per kos at the rate of 1,000 mans provided the boat and the men belong to one and the same owner. But if the boat belongs to another man and everything in the boat to the man who has hired it, the tax is 1R for every 2½ kos.

is silent about the rates levied at different posts on land routes. But certain information regarding the rate may be gathered from the account of foreign travellers. Pelsaert states that the rate of the toll levied on all goods at Broach was 1½ per cent both in transit and on those brought in market For sale.[1] We are also informed by the same traveller that the toll was levied after the merchandise was valuated by the *qazi* in the light of the local prices.[2] But it appears that the *rahdari* was generally levied in accordance with the number of conveyance (carts, chariots, bullock, horse, ass, etc.) through which the merchandise was transported.[3] It is also notable that the toll-officers (*rahdars*) were not allowed to open the bales of merchants on roads without obtaining their permission.[4]

Under the Mughals there had been also provision for remission of or exemption from customs and transit duties in cases

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1. Pelsaert, p. 43.

2. Pelsaert, p. 43.

3. *Mazhar-e Shah Jahani*, pp. 171-72, 136; Qazvini, III, pp. 509-10; *Akhbarat*, 46th R.Y. ff. 145-46; *English Factories*, XI (1651-54), p. 114; Tavernier, I, p. 36.

4. *Tuzuk*, p. 4.

of natural calamities and certain other miseries. When the serious famine struck Gujarat in 1630 taxes (including duties on merchandise) amounting to 50 lac rupees were ordered to be remitted.[1] These are several references from Aurangzeb's reign about the remission of transit duty on food grain and other essential commodities in case of rise in their prices and scarcity.[2] To meet the same problem in Jahangirnagar (Bengal) Daud Khan, the then governor of Bengal (1663), exempted the food grain from the transit duties and this administrative measure was appreciated by the central government.[3] Shivaji's attack on and plunder of Surat in 1664 had led to great misery to the people in general and the merchants in particular. At the instance of the Emperor Aurangzeb the merchants of the city were exempted from payment of custom duties for one year.[4]

Apparently as a relief to the merchants and traders every Mughal emperor from Babur to Aurangzeb had issued orders

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1. Amal-i Salih, I, pp. 421-22.

2. Alamgir Nama, p. 1082; Khafi Khan, II, p. 8; Mirat, I, pp. 251-52, 309, 315; Fathiyya-i Ibriya, ff. 79b-80a; 110b-111a.

3. Fathiyya-i Ibria, ff. 110b-111a.

4. English Factories, XI (1661-64), pp. 310-11, 314-15.

abolishing transit duties on merchandise mentioned indiscriminately as *zakat*, *hal*, *tamgha*, *rahdari*, etc.[1] But the local officials continued to realise them as their perquisites throughout the Mughal empire. This happened usually in territories which were at a distant from the capital and the corrupt officials considered themselves safe from the clutches of the central government. During the last years of his reign, Aurangzeb prolonged absence from the capital and his occupation with the war in the Deccan resulted in a general decline in administrative efficiency. The corrupt customs officers and toll-collectors took full advantage of the opportunity to warm their pockets.

From the above discussion it is evident that the taxes on trade and commerce were systematised under the Mughals. The customs and transit duties were levied on merchandise in a methodical manner. The rate prescribed by the state for the custom duty was moderate and reasonable, though the prescribed rate was not always implimented by the customs officers and

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1. The *rahdari* collected by the local officials from the merchants might not be high but taking into account the whole amount levied at various check posts had great effect on the cost of merchandise to be transported to a long distance. It is not surprising that sometimes the amount paid in *rahdari* on certain goods exceeded its original cost. As a result during the decline of the administrative efficiency the *rahdari* had become a source of great harassment and oppression to the merchants and travellers and it was considered most burdensome impost by the merchants. (Khafi Khan, II, pp.89-90)

collectors of the duties. The prohibited cesses were also realised from the merchants by dishonest local officers against specific imperial directives. No doubt, incidents of over-estimation of the prices of goods,[1] extortion and illegal exaction are recorded in the contemporary sources, but it is also evident from them that whenever the emperor came to know specific cases of malpractices he made effort to remove them.[2] The imperial government exercised vigilance and showed promptness in punishing the dishonest officials, though it was not completely successful in eliminating the practice of illegal exactions. In the accounts of foreign merchants and travellers we come across frequent complaints about the excessive amount demanded in transit duties, strictness of the customs-officers and harassment at the hands of local officials.[3] With regard to their grievances against excessive demand and numerous tolls it may be stated that their requests for reduction in the rate of the

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1. English Factories, V (1634-36), p. 264; VI (1637-41), p. 136; Letters Received, IV, p. 79.

2. Mazhar-i Shah Jahani, pp. 186-87; Mundy, I, p. 161; Khafi Khan II, p. 87; Ruqaat-i Alamgiri, (Letter No.51); English Factories, I (1618-21), pp. 38-39, 221; I (New Series), p. 117; II, 29, 311; III, p. 72; X, pp. 314-15; Purchas, IV, pp. 125-26; Manucci, II, p. 389.

3. Tuzuk, pp. 4, 206-7; Mirat, I, pp. 213, 223; Majmuat Farmin, ff. 17b-19a; English Factories, I (1618-21), pp. 38-39; pp. 314-15; Manucci, II, p. 243.

custom duty and exemption from tolls were usually granted.[1] Admittedly, the goods were thoroughly checked by the customs officer at the customs houses and this often led to some delay in clearance of the goods, but it became necessary in view of the increase in cases of smuggling and cheating by foreign merchants. The strictness and vigilance of the officials was considered as humiliating and act of harassment by the foreigners. In fact their attempts to evade the prescribed custom duty and to defy the laws of the land made the officials' attitude unfavourable towards them. The rivalry between merchants of different nationalities and their mutual jealousies also damaged their collective interest. Besides, subversive activities of merchants of certain countries led to strain their relations with the Mughal emperor. For example when the Portuguese adopted the practice of extorting commercial concessions by seizing trading vessels and blocking the passage of the pilgrim-ships to Mecca and started piratical activities in the Arabian sea during the reign of Shah Jahan, their relations with the emperor could not remain amicable.[2] The difficulties and harassment experienced by the foreign or

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1. Majmua-i Faramin, ff. 18a-19b; English Factories, VI (1637-41) (Introduction, p. 16; VII (1642-45) pp. 2-4, 272-74; VIII (1646-50) p. 62, XI (1661-64) pp. 310-11, 314-15; Mundy, II, p. 40.

2. Manrique, II, p. 278.

local merchants were the exception and not the rule. On the basis of some isolated cases no generalisation should be made about the inefficiency of the Mughal government and corruption of its officers.

MONOPOLY IN ITEMS OF TRADE AND ITS LEGAL ASPECT

The Mughal emperors were keenly interested in the promotion of trade and commerce and had extended all kind of assistance to the merchants. But to safeguard the state interest they had established state monopoly in certain items of trade. In normal condition the monopolisation in commoditie of trade is not lawful. But it has been allowed in times of economic stress and military exigency in the same way as enforcement of prohibition to export certain goods to foreign countries is considered legal in state interest.[1] What factors led the Mughal government to establish monopolies in certain articles may be known by a critical study of the practice prevailing at that time.

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1. According to the Islamic law, in times of war it is impermissible to export military accoutrements from a Muslim country. Even, a non-Muslim, who has entered a Muslim country with permission, would not be allowed to purchase or export the weapons to the belligerent country (Kitab-ul Kharaj, p. 188).

The government established trade monopoly in indigo which was in great demand for the internal consumption and was of prime importance among items of exports to Europe. The earliest reference to the monopoly in indigo is of 1623 as the English Factory records state that indigo was available in great quantity at Surat but the merchants were reluctant to trade in it as it was prohibited.[1] In 1633, the monopoly was further tightened, as the government was short of money after the war with Ahmadnagar. On the suggestion of the governor of Surat, Shah Jahan made a contract with Manohar Das Danda, a trader, and granted him the sole right of buying all indigo grown in the country, in return for the payment of 11 lac rupees in three years.[2]

The saltpetre was the second important item of state-monopoly. As an essential ingredient of gun powder, the Saltpetre was of great value for the purpose of war. It was not only required for the internal use, but was also in great demand in European countries. The saltpetre trade was declared a state monopoly in 1629. In the same year Shah Jahan

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1. English Factories, II (1622-23) p. 219.

2. Ibid., pp. 324, 328. The English and the Dutch were apprehensive that this would result in a rise in the prices of indigo, and hence entered into an agreement not to buy any indigo except at their own price. Consequently the monopoly failed and had to be lifted by the emperor after one year.

prohibited the sale of saltpetre at Agra till the state had been supplied with 10,000 maunds of gun powder.[1] To meet the requirements of war on the North-Western frontier and in Central Asia (1647-48) the emperor strictly forbade its export, and restricted its use exclusively for the government.[2] During his governorship of Gujarat (1646), Aurangzeb is reported to have prohibited the sale of saltpetre to the English to prevent its use against the Muslims.[3] Later on, he is stated to have forbidden its sale to all Christians at the instance of the Sultan of Turkey.[4] In 1654, Prince Murad, the governor of Gujarat, permitted the English to purchase and export the saltpetre. This permission was revoked by the central government and the English were prevented from buying or exporting it from Gujarat.[5] After his accession Aurangzeb completely forbade the production, refinement and purchase of saltpetre except for consumption by the government factories. An English factor complains, "it (saltpetre) is no current commodity, nor required by any except the King for his particular occassion. Besides it

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1. English Factories, III (1624-29), p. 335; IV (1630-33), p. 21; Albert Mandeslo, The Voyages and Travels into the East Indies, (tr. by J. Davies), London, 1922, p. 28.
2. English Factories, VIII (1646-50), pp. 57-59.
3. Ibid., VIII (1646-50), p. 35.
4. Ibid.
5. Ibid., IX (1651-54), pp. 299-300.

is prohibited to all others to buy any, and may lawfully be surprized as the King's commodity."[1]

From economic considerations Aurangzeb banned in 1681 the sale of gold and silver except to the official mints and ordered the superintendents of mints to take bond from the merchants to that effect.[2] Probably the officials showed negligence in the implementation of the order, it was again proclaimed in 1697 A.D.[3]

Sometimes the restrictions were placed on buying and selling certain articles temporarily by the government. Father Monserrate writes about Akbar's reign. "There is a law also that no horse may be sold without the king's knowledge or that of his agents."[4] William Hawkins relates of Jahangir's reign. "By this means the King hath ingrossed all faire stones that no man can buy from five carats upwards without his leave; for he hath refusal of all, and giveth not by a third part so much as as their value."[5]

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1. Ibid., XII (1665-67), p. 28.
2. Mirat, I, p. 304.
3. Mirat, I, p. 340.
4. Commentary, p. 207.
5. Early Travels, pp. 111-12.

Besides the imperial monopoly in certain trade articles, the provincial governors and local officials used to control the trade in certain articles for their personal benefit without any direction from the central government. Lead was one of the main items which was subject to the control of local officials. It was imported from Europe. The English merchants at Surat complained that nobody except the governor and his agents was allowed to purchase it, and they sold it at arbitrary prices.[1]

Sometimes the governors and other state officials established their control over essential commodities and so worked against public interest.[2] The English merchants at Surat complained in 1619 that the local officers were preventing them from purchasing wheat for the crew of their ship (expected from the Red Sea) though the permission had been granted for the same by the Emperor and Prince Khurram.[3] Jamshed Beg, the governor of Surat, is reported to have forbidden the general sale of linen particularly to the English and forced the merchants to sell it for the use of Prince Khurram. He also ordered the imprisonment of the linen traders and brokers for

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1. <u>English Factories</u>, I (1618-21), pp. 134, 323; III (1624-29) pp. 152-57; IV (1630-33), pp. 211-86.

2. Such practice was possible in a situation where a governor or any other local officer entered the market as a prospective trader of any particular article.

3. <u>English Factories</u>, I (1618-21), p. 120.

selling it to the English without his permission.[1]

A general complaint against the governor of Baroda (1636) was that he forced the weavers to sell their cloth to him at the price fixed by him.[2] Mir Jumla the governor of Bengal (1660-63) surpassed his predecessors in keeping control on all essential commodities as he endeavered to become the sole stockist. He used to sell them at his own price. For his personal gain he offered in 1660 to supply the English factors annually as much saltpetre as they would require.[3]

Shaista Khan, the governor of Bengal, abolished the state monopoly maintained by the former governors in all articles of food and clothing and put an end to their practice of selling them at arbitrary prices.[4] But in other articles he himself established the monopolistic control. He is reported to have monopolised the entire saltpetre trade at

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1. Ibid., I, pp. 160, 187.
2. Ibid., V (1634-36), p. 290.
3. Ibid., X (1655-60), p. 310, XI (1661-64), pp. 67-68.
4. Fathiyya-i-Ibriya, f. 127b. It also appears from the same source that prior to the governorship of Shaista Khan it was a common practise at the ports of Bengal that the agents of the governor detained elephants and others animals brought there through ship and bought the selected ones at the prices fixed by them. This was also stopped by the governor. (Ibid.).

Patna in 1664 and then he sold it to the English and Dutch merchants at his own rate. He also restricted the sale of betelnut, firewood, bamboos and thatch and sold the stocks to the above merchants at a rate of 10 to 15 per cent higher than the market.[1]

It would be, however, misleading to conclude that the above malpractices went unnoticed by the imperial government and that no attempt was ever made to check them. It is evident from the contemporary sources that Aurangzeb made attempt to wipe out monopolies of the state officials or otherwise in commercial transactions. It was brought to Aurangzeb's notice that in Ahmadabad and adjoining territories, some persons had full control of the rice trade and allowed none to deal in this commodity without their consent. Aurangzeb put down this practice.[3] He is also reported to have abolished the monopoly of the state officials in roses purchased for the state perfumery. He permitted the dealers to sell flowers to any customer they liked.[4] He also broke the monopolistic control in gold and silver thread-industry of a family of weavers in Ahmadabad as it was unlawful in his opinion.[5]

1. English Factories, XI (1661-64), pp. 394-97.
2. Ibid., XI (1661-64), pp. 396, 402.
3. Mirat, I, p. 262.
4. Ibid., p. 262.
5. Ibid., pp. 292-93.

The above cases are a testimony to the fact that Aurangzeb disliked the unnecessary monopolistic control in items of trade, in general and in the essential commodities in particular. He adopted several measures to restore the commercial freedom. Apparently it was the same factor which decided his attitude towards market control. It appears from one of the manshur quoted by Namkin that both Hindu and Muslim merchants were required to present themselves in the dar-ul qaza with a list of the prices of goods in which they deal. The muhtasib then prepared the price schedule on the basis of price list of merchants and noted it in the diary submitted to his office.[1] In the early years of Aurangzeb's reign one of the important functions of the muhtasib was to fix the prices of commodities and keep a watch over it.[2] Sometimes the work of price fixation was done by an agent of the muhtasib who would come to the kotwal's chabutra and fix the prices there.[3] But when Aurangzeb was told by the theologians that the system of the price control was illegal[4] he abolished it.[5]

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1. Abdul Qasim Namkin, Munshi'at-i-Namkin, ff. 104-5. Akbar is reported to have fixed the rate for silver and cloth in 39th year of his reign and ordered the transaction in these items to be carried on according to the fixed rate (Badauni, II, 390).

2. Mirat, I, p. 309; Hidayatullah Bihari, Hidayat-ul Qawaid, (MS. Aligarh Abdussalam, 149/339) ff. 27ab; Waqai Ajmer, p. 297.

3. Waqai Ajmer, p. 348.

4. This view was based on the ruling of the Hanafite jurists. The Malikites, however, considered it legal. (Kitab-ul-Kharaj, p. 132).

5. Khafi Khan, II, pp. 295-96.

From the preceding discussion it may be concluded that the Mughal rulers had made certain laws for encouraging and controlling the trade and commerce. Rules existed even for the security of person and property of traders, customs, transit duties, ferry charges, ports and port officials. These elaborate rules point to the fact that the Mughal had systematised commercial laws to some extent and they were enforced also. If these laws were broken or flouted by any merchant or the government official, he was punished. It also appears from the analysis of the contemporary sources that the Mughal emperors - especially Aurangzeb - made attempt to bring various aspects of trade and commerce in conformity with the Islamic law. They did not succeed completely in eradicating the unlawful practices, mainly because of the disregard of the imperial orders by the local officials and negligence of the provincial governors who sometimes had their own axe to grind.

Chapter V

THE INTERNATIONAL LAW

International law has been variously defined by the modern scholars as "the body of rules, principles and standards which various states recognize to be binding in their relations with each other"[1] and "the body of customary and conventional rules which are considered legally binding by civilized states in their intercourse with each other."[2] It has also been explained as "a system of jurisprudence, which for the most part, has evolved out of experience and necessities of situations that have arisen from time to time."[3] International law in its widest sense also includes the rights of individuals within an alien state or rules guiding the activities of foreigners in a state.

International law does not need any tribunal to enforce its provisions. To make its principles binding it is only required that they must have received the consent of

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1. Lester B. Orfeild & Edward D. Re, Cases and Materials on International Law, the Bobbs-Merrill Company Inc Publishers, 1955, pp. 1-2.

2. L. Oppenheim, International Law, London 1962, Vol. I, pp. 4-5.

3. D.C. Washington, Hackworth's Digest of International Law, U.S.A. Printing Press, 1940, Vol. I, p. 1.

the nations who are to be bound by it.[1] This consent may be expressed through a treaty, an agreement or may be deducted from established usages and prevalent practices. So to form an idea of the international law it is essential to study the declarations in treaties, customs of a country, verdict of judicial courts and regulations laid down by the jurists.

It seems unrealistic to trace the origin of international law from the 18th or 19th century or to assume that it was a product of modern western civilization. It is actually a living and continuously expanding code which has evolved out of the experiences and situations that have faced the nations from time to time. Though its roots go down very deep in the past history, but changes and modifications were introduced in it with the progress of civilization.

The concept of international law existed in the Islamic world even before conscious realization by the west that some sorts of the principles should be chalked out to

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1. In view of this situation it is sometimes believed that the international law cannot be defined in the usual sense of the law, because "law" implies a law-giver and a tribunal capable of enforcing it and taking action against its transgressor (Orfield, op.cit. p.6)

guide inter-state relations.[1] The problems of an ever expanding Muslim state led to the formulation of a body of rules to guide its relation with other states. In the theoretical expositions of the Muslim jurists, the external relations of an Islamic state is governed by a special set of rules designated as *Siyar*.[2] The code of conduct evolved by the Muslim jurists did not merely regulate the relations of a Muslim state with other Muslim states, but it also governed its intercourse with non-Muslims as individuals or as an alien state. They consist of rules for international relations applicable in times of peace, war and neutrality.[3]

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1. Islam has its own history of the evolution and development of international law which has not been taken note of by the modern writers on the international law. A study of evolution of the modern international law shows that it owes an unacknowledged debt to the Islamic law guiding international relations. This lacuna in the history of international law has been rightly realised by Hanss Kruse, a German Scholar, in his article, "The Foundation of Islamic International Jurisprudence" published in *Journal of the Pakistan Historical Society*, Vol. III, (1955) Pt. I, p. 231.

2. The word *Siyar* (plural of *sirat*) literally means 'conduct' and 'behaviour'. In technical term it is used for the conduct of the Prophet in times of peace and war. From the second century of *Hijra* it came to include also the conduct of Muslim rulers in dealing with international affairs. Explaining the term *Siyar*, as Sarkhasi, who had entitled his chapter on international law as *Siyar*, (*al-Mabsut*, Cairo, 1324 AH, Vol.X, p.2) states that he has designated this chapter by *Siyar* since it describes the behaviour of the Muslim towards polytheists, resident aliens (*mustaminn*), protected people (*zimmis*), apostates and rebels. Abu Hanifa is said to be the first jurist to designate the set of special lectures he delivered on the Islamic law of peace and war as the *Siyar*. These lectures have been compiled by his disciples. Of these compilations, the most famous are those of his close disciple Muhammad ash-Shaibani, entitled *Kitab-us-Siyar-is Saghir* and *Kitab-us-Siyar-il Kabir*. Some other notable works of the same nature are *Siyar-ul-Auzai* and *al-radd-ala Siyar-il Auzai*.

applicable in times of peace, war and neutrality.[1]

The subjects discussed by the Muslim jurists under international law are as follows:

1. Relations of an Islamic state with other states—Muslim and non-Muslim both.
2. The position of the Muslims residing in foreign countries.
3. The position of the non-Muslim subjects under an Islamic state.
4. The position of foreigners residing in an Islamic country.
5. Treatment of the rebels having power of resistance.
6. Treatment of the family and associates of rebels, and that of prisoners of war.
7. Ambassadors.
8. Pirates.

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1. Some modern scholars are of the view that the Islamic system of international law as evolved by the Muslim jurists was entirely exclusive, because it did not recognise the principle of legal equality among nations which is inherent in the modern system of international law. According to them it was merely a self-imposed system of law binding on its adherents even though the rules ran against their interest. The binding force of such a law of nations was not based on mutual consent but on moral or religious values (Majid Khadduri, Law in the Middle East, Washington, 1959, pp. 349-50).

After the introductory discussion about nature, scope, fundamentals and sources of the international law, in general, we will now highlight its various aspects and workings during the Mughal rule.

With the establishment of Muslim rule in India, there was an influx of foreign visitors from Bukhara, Samarqand, Balkh, Khurasan, Khawarizm and Persia through the north-western passes of the sub-continent. Besides, the ports on the western coast of the country (i.e. Thatta, Broach, Surat, Chaul, Goa and Karwar) served as other medias of approach of the trading nations. The early Sultans of Delhi welcomed ambassadors from several countries of Central Asia and Trans-oxiana and sent also their emmissaries to some of these countries.[1] The Mughal Emperors, in their turn, established cultural, commercial and diplomatic relations with some foreign countries and nations of the east and west. Welcoming travellers, merchants and ambassadors in a large number from the Asian and European countries and sending their own envoys, the Mughals widened the scope of the international relations.

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1. Tabaqat-i Nasiri, pp. 317-19; Tarikh-i-Mubarak Shahi, p. 38; Tarikh-i-Firuz Shahi, pp. 50-52; 492; Maktubat-i-Rashidi, (ed. Muhammad Shafi) Lahore, 1945, pp. 153-57; Ibn Fazlullah al-Umari, Masalik-ul-Absar-fi mumalik-il amsar (Eng. tr. by O. Spies) Aligarh, pp. 40, 57.

The international law under the Mughals[1] will be discussed under the following sub-headings:

1. Foreign residents:

    (a) Conditions for their stay in the country. Facilities and concessions provided to them.

    (b) Procedure for deciding their cases.

2. Treatment towards the prisoners of war.

3. Treatment towards envoys and ambassadors.

4. Punishments for:

    (a) Piracy

    (b) Espionage

FOREIGN RESIDENTS:

It is an important part of the international law that protection be provided for the life and property of the foreign residents. According to the Islamic law a foreigner (native of an alien country) may be permitted to stay in the

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1. The international law and its actual working during the period may be studied from the available cases and the agreements made about them. For such study we have to depend mainly on the European accounts which supply considerable information about the matter under discussion.

dominion of a Muslim country by obtaining _aman_ (safe conduct). This protected foreigner, called _mustamin_, is guaranteed full protection by the state (against aggressive acts by individual Muslims or the state) during his stay in the country. The pledge of security may be granted either by the _Imam_ (head of the state) or by one of his representatives or by individual Muslims.[1] The privileges granted to a foreigner under the provisions of _aman_ have only temporary validity. If a person under _aman_ was discovered working against the state or found abusing his concessions, the pledge for his security stand cancelled.[2] He is permitted to conduct business transactions with the Muslims but not in war-materials or those goods which are prohibited by Islam such as liquor or pork. He is also not allowed to return to his country with impliments of war or any thing that is valuable for the purpose of war. If a foreigner had given loan to a Muslim or _Zimmi_ or had kept a deposit with

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1. _Sharh-us-Siyar-il Kabir_, IV, pp. 66-67; _Fatawa-i Alamgiri_, II, pp. 251-52, 271-72. The unofficial _aman_, may be given by an adult Muslim - free or slave, man or woman. Children, insane, and _zimmis_ are denied the right.

2. _Fatawa-i Alamgiri_, II, p. 271; _Sharh-us Siyar il-Kabir_, IV, p. 178. If he committed murder or adultery within the Muslim territory he would not be considered to have violated the _aman_, but he would be liable to legal punishment for violating the law of the land (Ibid).

one of them, he would always claim his money as well as deposits even after return to his country. If he died in a Muslim country leaving some property behind, his heirs would be allowed to take possession of it after establishing their claim. His property would belong to the bait-ul mal in case he left no heir.[1]

The Mughals had made provision to guarantee security to the person and property of the foreigners. On entering the country, a foreigner - whether a traveller, merchant or envoy was granted a permit or a pass (dastak or parwana)[2] which contained clear instructions to the officials specially those incharge of patrolling and guarding the roads

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1. Kitab-ul Kharaj, p. 131, Fatawa-i 'Alamgiri, II, pp. 271-72; Sharh-us Siyar il Kabir, IV, pp. 178-9. The property of the deceased (foreigner) would be restored to his heirs on presentation of witnesses. The testimony of the Muslims as well as zimmis would be legally acceptable. The letter of the ruler of the deceased's country confirming genuineness of the heirs would be ineffective in view of the law. The property of the deceased would revert to the state treasury if he had left no heir. (Sharh-us Siyar il Kabir, IV, pp. 232-33.

2. One of the earliest Parwanas given by Akbar to the Jesuit priest Le Grim, states, "wherefore I order my officers aforesaid to bestow great honour on Dam Le Grim and on the Fathers for whom I am sending, in all towns of my realm through which they shall pass granting them an escort to conduct them safety from town to town, providing them with all that is necessary for themselves and their beasts......Moreover I desire

(Footnote continued on next page

(viz., watchmen, road-guards, *faujdars*, *zamindars*) to make arrangement for his safe journey and protection against harassment and molestation. The Mughal government took administrative measures to ensure safety of the travellers on roads and highways. Police posts were set up on roads and guards were appointed there to prevent robbery and attend to the welfare of the travellers.[1] It also appears from the foreign accounts themselves that guards were also provided on hire by the government to the foreign trade-caravans, travellers and envoys. When William Hawkins, the English envoy to the court of Jahangir (1608-13) started from Surat in the beginning of 1609, the officers of Abdur Rahim Khan Khanan, the governor of Deccan, provided him with fifty Pathans on hire for his protection. They escorted him to Dhaita (a small town about ninety miles from Surat) where they were relieved by another group of forty horsemen. At

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(Previous Footnote Continued)

that this order may be carried out in respect both of their persons and goods; that they pass freely throughout my towns, without paying tax or toll and be well-guarded on their roads (E.D. Maclagan, "Jesuit Mission to the Emperor Akbar" *Journal of Asiatic Society of Bengal*, vol. 65 (1896), pp. 60-66. For the similar documents, see also *English Factories*, I (1618-21), pp.34, 38-39; *Letter Received*, I, pp. 236, 250; Purchas, IV, p. 125.

1. *Letters Received*, II, pp. 106-7; VIII, pp. 300-11 *English Factories*, I (1618-21), pp. 59-60, 81, 91, 120, XII, pp. 272-73; Thevenot, p. 28; Manucci, II, pp. 196-97.

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Burhanpur the guards were again changed.[1] While Sir Thomas Roe was encamping at Chopra (a village on the route to Surat from Burhanpur) he was warned by the imperial officers of the danger of sleeping outside as there was a haunt of robbers. Some guards were appointed at his camp to keep watch all over night.[2] Visiting India in 1606, Thevenot acquired the service of Charans[3] to escrot him on his way from Cambay to Surat.[4] Terry had also the same kind of experience when he travelled from Surat to Mandu in 1617.[5]

In addition to all these security arrangement, it has been an established rule of the Mughal government that

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1. Early Travels, pp. 78-80.

2. The Embassy of Sir Thomas, Roe, p. 67.

3. Charans, who were generally found in Gujarat, were divided into two categories, merchants and bards. The latter acted as guards for the travellers. They even sacrificed their lives for the safety of their employers. A sanctity seems to be attached to their lives. It was widely believed that whoever dared to shed their blood would face destruction. (Thevenot, p. 29; J. Malcolm, A Memoir of Central India including Malwa and adjoining Provinces, London, 1832, p. 139.

4. Thevenot, p. 19.

5. Early Travels, p. 313.

if the foreigners were way-laid by robbers they were to be given due compensation for their loss either by the local officials or by the central government.[1]

A french envoy, named Berbar, was assaulted and robbed of Rs. 31,200 by a group of bandits in the vicinity of Agra. The envoy complained to Aurangzeb who ordered the faujdar of the place to pay him Rs.15,000 by way of compensation for the loss of his property. He was, further, given Rs.15,000 by the state treasury for physical injuries which he had received at the hands of the robbers.[2] An Armenian merchant was robbed of 2400 sequins (venetian gold coin) at Surat in 1666. A complain lodged with the local officials proved ineffective. When representation was made to the governor, he ordered the Kotwal to pay compensation to the Armenian merchant.[3]

Procedure for dealing with the cases of foreigners:

Foreigners residing in a Muslim country with the permission from head of the state were allowed to be

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1. Thevenot, p. 80.

2. Ibid., p. 28.

3. Thevenot, p. 28.

governed by their own laws as well as by terms of treaty concluded between them as a group with ruler of the Muslim state. The shariat's law was not applicable to their personal behaviour or mutual relations. But in their relations with Muslims or in matters connected with the state, they were expected to be governed by the Islamic law. In principle, the non-Muslims foreigners were not required to bring their cases arising out of a conflict between two persons of the same community to the judicial court of a Muslim state. But if they desired to file their cases in court of a Muslim judge, the latter was authorised to decide their cases.[1] In trying their cases the Muslim judge should apply their own law. But if the application of their law leads to contravention of the Islamic law the judge should either decline to adjudicate or apply the Islamic law.[2]

In a civil or a criminal case involving a Muslim and a protected-foreigner (mustamin), the Muslim judge was

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1. Ibn-Rushd, Bidayat-ul Mujtahid, Istanbul, 1333 AH, p. 113; Muhammad bin Idris Shafii, Kitab-ul Umm, Cairo, 1322, AH., IV, p. 240. According to Abu Hanifa, the qazi has to try their cases if they are brought before him, while Imams Malik and Shafii are of opinion that the qazi is not bound to try them. (Ibn-i Rushd, p. 113)

2. Fatawa-i Alamgiri, II, pp. 277-78.

required to apply the Islamic law. If a *mustamin* killed or wounded a Muslim, the law of retaliation (*qisas*) would apply to him. But if a Muslim murdered a *mustamin* he was not to be capitally punished in *qisas*. He would have to pay the *diyat* (blood-money) only. But in case of adultery the situation was different, for if a Muslim committed it with a *mustamin* girl he was subject to the prescribed punishment without any concession.[1]

As regards the law suits between non-Muslim foreigners following different religions (e.g. between a Christian and a Jew) they were to be governed by their own respective laws except in cases which related to peace and order of the land such as murder, theft or highway robbery. In such cases, punishment given to the offender must be according to the Islamic law. But in the case of an offense committed by a protected foreigner against a *zimmi*, the foreigner would have to pay the compensation only and no legal punishment based on Islamic law (*hadd*) would be imposed upon him.[2]

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1. According to Imam Malik, if a non-Muslim committed fornication with a Muslim woman, the Muslim woman was to be tried by the Muslim *qazi* and the case of the non-Muslim would be referred to a judge of his own faith (Ibid.).

2. *Fatawa-i Alamgiri*, II, pp. 277-78.

As far as disposal of cases of the foreigners under the Mughals is concerned it is evident from an agreement concluded between Sir Thomas Roe and Prince Khurram (governor of Gujarat) in 1618 that the Englishmen were allowed to follow their own religion and to dispense their cases according to their own laws without interference. Disputes among them were to be decided by their president. The law suits between the English and the Muslim or non-Muslim merchants were to be settled by the native authorities according to equity.[1] But it appears from an agreement reached between the English and the Mughal authorities that a case between an Englishman and a Muslim was to be referred to both the English chief and the Mughal governor. After investigation if the Muslim proved to be guilty, the action was to be decided by the governor. But if the Englishman happened to be guilty the case was finally disposed of by the authorities of the company.[2]

It is evident from the European sources that the cases that arose between two foreigners of the same country

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1. English Factories, I (1618-21), p. 39; XI (1661-64), p. 168; The Embassy of Sir Thomas Roe, p. 478; Letters Received, VI, p. 305; Bernier, 286-87; Purchas, IV, pp. 125-27. In case, the chief of the English factors refused to decide the case of his own country men, the Mughal authorities were free to redress their grievances.

2. English Factories, II (1622-23), p. 310; III (1624-29), p. 29.

were generally decided by their own authorities[1] and the cases involving foreigners of different nationalities[2] or a foreigner and a Mughal subject, were disposed of by the Mughal authorities.[3] There is a reference from which it appears that sometimes the cases of the foreigner under trial before the Mughal court, were transferred to their own authorities for some technical reasons. Manucci had a dispute with some Portuguese of San Thome (a place near Madras) about the payment of a debt due to them. The matter was reported to the governor Shafi Khan. The accused were called by the governor and asked of Manucci's claim. They refused that they owed anything in debt to Manucci and offered to take oath in their support. But since the governor was not familiar with the European languages he referred the case to Thomas Pitt, the President of the English Factory at Madras, to decide it according to equity.[4]

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1. Early Travels, p. 227.

2. English Factories, I (1618-21), pp. 97, 91, 118, 273; IX (1651-54), p. 224; XII (1665-67), p. 144; N. Manucci, A Pepys of Mogul India, London, 1913, p. 219.

3. Letters Received, II, pp. 106-7; English Factories, I (1618-21); VI (1637-41), pp. 106-8; Manucci, IV, pp. 169-70.

4. Pepys of Mogul India, p. 219.

The English factors were allowed to appeal to the emperor against the decisions of the governor and the judicial officers. In this task they were assisted by their agent at the Mughal court.[1]

It seems that sometimes disputes between an Indian and the members of the foreign trading company were referred to the chief of the company in India. He settled such cases after consultation with higher authorities of the company in England. John Lambton, an official of the English East India Company, died in India in 1668. He had borrowed Rs. 5,000 from a non-Muslim physician, who was formerly an employee of the company. The creditor petitioned to the English president at Surat for the payment of the debt. The president referred the case to the Directors of the company in England for final decision and sent them an attested copy of the document which had been prepared and signed by two witnesses at the time of the transaction of the loan.[2]

There is also evidence to shew that the cases of the foreigners were tried by the Mughal court according to their own law. A case of debt between the English and a

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1. English Factories, XIII (1668-69), p. 181.

2. English Factories, XIII (1668-69), p. 33.

Portuguese was brought before the Mughal governor of Surat in 1619. The English President of Surat pleaded before the governor that the case should be decided according to the Christian law. The governor acted accordingly.[1] Besides, in the cases arising between two foreigners of different religions or between a foreigner and an Indian Muslim if taking oath became necessary they were permitted by the <u>qazi</u> to swear at their respective religious books. It was alleged that certain English men stole the valuables of some Indian and Armenian passengers while coming from Combroon on an English ship to Surat (named Swan) in 1639. They sought compensation for their loss and lodged a complaint at the court of the governor of Surat. The English factors were called to the court. The plaintiffs offered to take oath in support of their claim.[2] The governor's verdict was that if

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1. A Portuguese merchant had given loan to a servant of the English company who later on left for England without repaying the loan. The Portuguese claimed it from the English. The latter was of the view that the Christian law did not enjoin upon a master to clear the debt of his servant unless it had been obtained by his own order. (Ibid., I, (1618-21), pp. 91-94.).

2. According to Islamic law the plaintiff had to produce evidence and if he failed to do so the defendant was required to take oath. <u>Fatawai Alamgiri</u>, III, p. 296; <u>Hidaya</u>, III, pp. 186-87.

the merchants took oath before the qazi, the English would be liable to meet their claim. The Muslim and the Armenians took oath on the Quran and the testament respectively to establish their claim and the English had to compensate them for their loss.[1] This is supported by Thevenot who states that a Christian claimant for debt used to swear upon Gospel, a Muslim upon the Quran and an infidel upon the cow.[2]

The non-Muslim foreigners were not bound by the Penal law of Islam. The sources record several cases of theft, robbery and other crimes in which the foreigners were involved, but in none of them they were subjected to punishments prescribed by the Shariat.[3] Even in cases in which one party was Muslim the prescribed punishment was not awarded to the culprit. In 1639 a Muslim merchant was robbed by an Englishman. When the merchant lodged a complain at the Royal court, the emperor ordered the offender to merely compensate the loss of the merchant which amounted to Rs.30,000.[4]

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1. English Factories, VI (1637-41), pp. 106-7.
2. Thevenot, p. 27. See also Manucci, Pepys of Mogul India, pp. 188, 219.
3. English Factories, VI (1637-41), pp. 106-7; Manucci, IV, pp. 169-70; Pepys of Mogul India, p. 219.
4. English Factories, VI (1637-41), pp. 107-8.

From the study of the above cases it is clear that the foreigners were not bound to sue to the Mughal court for settlement of their disputes. But if they brought their cases to the Mughal authorities, the latter decided their suits. The Mughal court had jurisdiction only over those cases in which the plaintiff and the defendant belonged to two different countries or in cases of dispute arising between a native and a foreigner. The Islamic law was not applied to the cases of the non-Muslim foreigners except when law and order of the land made it imminent or they themselves requested the dispensation of their cases according to the Islamic law.

Prisoners of War:

Islamic law leaves to the discretion of the head of the state (Imam) the choice to select any one from amongst the five alternatives regarding the prisoners of war, viz., beheading, enslavement, release on payment of ransoms, exchange with Muslim prisoners and gratuitous release.[1] The Capital

1. Quran, XLVIII : 4; Fatawa-i 'Alamgiri, II, pp. 286-87; Hidaya, II, pp. 545-46. The conception that enslavement of prisoners of war is the only way, prescribed by Islam, for dealing with them is quite wrong. It is merely one of the different ways which could be adopted in dealing with them. Islam has laid great emphasis on showing generosity and kindness towards the slaves and it has always encouraged their manumission. The Quran has exhorted liberation of slaves and ordained that the income of the Islamic state should partly be allotted for the manumission of the slaves(Quran II : 177, IV, 92, V :89, IX : 60; LVIII :3, XC :13.).The Prophet and early caliphs had set glorious examples of treating the slaves kindly and manumitting on a large scale (Tarikh-i Tabari, III, pp. 169-73).

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punishment for prisoners of war is permissible only in cases of extreme necessity. According to Abu Yusuf and some other jurists a prisoner may be beheaded only in the interest of the Islamic state.[1]

The treatment meted out to the prisoners of war under the Mughals varied from simple imprisonment to execution. The Mughal Emperors had made it a rule to inspect from time to time the prisoners lodged at different places and to examine their cases and release them if they were found innocent.[2] Though it is not clear that these prisoners also included the prisoners of war, but there is no evidence to disprove such possibility.

In 1562 Akbar made a rule that family members and relatives of the defeated people would not be taken prisoners and enslaved.[3] It means that before this year the family members

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1. Kitab-ul Kharaj, pp. 195-96. Abu Yusuf is also of the view that the state is responsible for their lodging and food until a final decision is taken regarding them. (Ibid.)

2. Tuzuk, pp. 256-57; Lahori, pp. 245-46; Qazwini, II, p. 287; 273-74; Mirat, I, pp. 282-83; Akhbarat, (M.F. No. 258) 12th R.Y. f. 2; 28th R.Y. f. 276; 30th R.Y. f. 89; 39th R.Y.f. 59.

3. Akbar Nama, II, p. 159.

of the defeated people were also enslaved. As regards the execution of the prisoners of war, a few references are available from the contemporary sources.[1] Once during the reign of Shah Jahan four hundred Portuguese prisoners of war were presented before the Emperor. He ordered that they should be given choice between Islam and execution. Those who accepted Islam were set free, but the rest were entrusted to different nobles with the instruction that whenever any one showed his willingness to accept Islam he should be set free and presented before the emperor. It is reported that many of them were executed.[2] While seige to the fort of Satara was going on in 1678, thirteen persons (four Muslims and nine Hindus) who had come out of the fort for fighting were taken prisoner war. Qazi Muhammad Akram was asked by Aurangzeb to consult the muftis and give his decision regarding them. He gave his verdict according to the Hanafite view that the infidels should be set free if they accepted Islam and the Muslims be kept in prison for three years. The emperor did not accept it and required the qazi to give his judgement in accordance with the

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1. It appears from the 'Adab-ul harb (p. 345) that the execution of the prisoners of war was allowed in pre-Mughal period, though making haste in their execution was prohibited.

2. Qazwini, III, pp. 571-72.

jurists of other schools, keeping in view the interest of the state. He revised his decision on the basis of the opinion of some other jurists and stated that both the Muslim and the Hindu captives might be executed as deterrent.[1] This was accepted by the Emperor.[2] One hundred and twelve followers of Sambhaji had been kept as prisoners of war at the Chabutra Kotwali in 1684. They were ordered to be executed.[3] The Akhbarat (news letters of Aurangzeb's reign) also refer to a number of cases of the execution of the prisoners of war.[4] In the contemporary sources we could not come across cases of release of the prisoners on ransom or that of gratuitous release and also no case of their exchange with Muslim prisoners could be found.

TREATMENT OF ENVOYS

The history of diplomatic relations in Muslim polity goes back to the days of the prophet when the fundamental

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1. Hidaya, II, pp. 584-85.

2. Ahkam-i 'Alamgiri, pp. 81-82. Muntakhab-ul Lubab (II, pp. 463-78) and Maasir-i Alamgiri (pp. 413-23) give details about the conquest of the fort of Satara, but they do not mention the incident recorded by the Ahkam-i Alamgiri.

3. Maasir-i Alamgiri, p. 243.

4. Akhbarat, 43 R.Y. Jan. 1700; 46th R.Y. Feb. 1703 & 47th, R.Y., April, 1704.

principles of treatment towards envoys and ambassadors of the foreign states were laid for the first time. The practices of the early Muslim rulers and the rules and regulations drafted by Muslim jurists made significant additions in this sphere. They may be summarised as follows:

The envoys, irrespective of their religion and nationality, were permitted to enter the Islamic territory as official messengers without any hindrance. They did not require a formal deed of protection (aman) when they carried diplomatic messages.[1]

The envoys were to be governed by the law of aman (safe conduct) given to a foreigner.[2] Their persons was considered inviolable. They were granted diplomatic immunity and were provided full protection for their life and property. They were considered sacrosanct and no body was allowed to molest or kill them. Even when an envoy had committed some offence against the state to which he was delegated he still

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1. Kitab-ul Kharaj, pp. 187-88; Sharh-us Siyar-il Kabir, IV, p. 86.

2. Ibid., I, p. 291.

enjoyed all the privileges of an envoy.[1] He, however, could be expelled in case doubts were raised against his bonafide.[2]

The government hosting them was not authorised to punish them except in extra-ordinary cases relating to the internal peace and security of the state. In such cases they might be detained or imprisoned.[3]

The valuables of an envoy were exempted from payment of import duty. But he was entitled to this privilege only if the Muslim envoy was granted the same by the government of the former envoy. Otherwise the Muslim state was permitted to realise duty on his goods like those from ordinary foreign visitors.[4]

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1. Kitab-ul Kharaj, pp. 188-89; Ibn-i Hisham, Vol. II, p. 6??. The rule of personal immunity for envoys goes back to the time of the Prophet Muhammad. He is reported to have assured security of life to two envoys of Musailma, a claimant to prophethood, in spite of their unethical and irreligious declaration to him. He is reported to have said to them, "Had you not been envoys, I would have ordered you to be beheaded" (Tabari, II, p. 146.)

2. Sharh-us Siyar-il Kabir, I, pp. 185, 291.

3. Ibid., I, 206-7; IV, p. 108.

4. Ibid., IV, p. 67, Kitab-ul Kharaj, p. 188.

The envoys were treated as state-guests. They were officially entertained and provided lodging at state expenses. There were several large houses in Madina in the time of the Prophet, especially meant for foreign guests. Such houses were known as <u>dar-uz Zaifan</u>. The house of Ramlah bin al-Haris had been earmarked for the same purpose as stated by Ibn-i-Sad.[1]

As regards the development of the diplomatic relations under the Mughals, it has been already pointed out that they did not keep themselves aloof and isolated but established diplomatic and cultural relations with foreign states. They exchanged envoys, sent ambassadors and received scholars and other eminent persons from abroad and so adorned the Mughal court with foreign dignatories.[2]

The Mughal emperors made elaborate arrangement to ensure the safety and security of the life and property of

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1. <u>Tabaqat-i-Ibn-i Sad</u>, Beirut, 1967, I, (Chapter on <u>Wafud</u>: delegations), p. 279.

2. The visit of an envoy was usually to offer condolence on the death of an emperor, to congratulate on the coronation of a new one, to seek assistance against a common enemy, to conclude agreement for commercial transaction, etc. (<u>Akbar Nama</u>, II, p. 170; III, pp. 5, 211, 576, 587-88; <u>Tuzuk</u>, pp. 320, 333; Lahori, I, pp. 193, 261, 282; II, pp. 152, 492-577; <u>Alamgir Nama</u>, pp. 610, 623; <u>Maasir-i 'Alamgiri</u>, pp. 35-37; Bernier, p. 143; Manucci, II, p. 107.

the envoys. Whenever the arrival of an envoy was announced, the emperor issued an order addressed to all governors, *faujdars* and road-guards to allow him passage and escort him to the limits of their jurisdiction.[1] Any harm or insult to the envoys was treated as disrespect towards the ruler whom they represented. Clear instructions were also issued by the Mughal government to the state-official that they should not harass the foreign emissaries. Giving his own observation Norris, the English ambassador, stated that while he was en route to the Deccan, his carriage was stopped at Navapur and a duty of three pice per cart was demanded from him which he found unusual as the goods of the envoys was considered exempt of all toll and customs duties. On reporting the incident to the local Mughal official the person responsible for it (customs house officer) was immediately arrested.[2]

The utmost care shown by the Mughal Emperors for the welfare of the envoys may also be realised from the fact that they appointed special officer to look after their

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1. See Supra pp. 178-79.

2. H.H. Das, *Norris Embassy*, Calcutta, 1959, p. 235.

interest and to deal with their problems.[1]

It is evident from the accounts of the European travellers that presentation of the letter of credence to the Emperor was a part of the code of conduct for the envoys.[2] Since the Mughal Emperors as a rule, did not accept letters except through his prime minister (*wazir*), the envoys were required to take care of this rule.[3] When the Emperor wanted to show special favour towards any envoy, he permitted him to present his letter through a prince.[4]

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1. The department of *diwan-i Risalah*, which existed in the Sultanate period, was nothing but a kind of foreign office which dealt with diplomatic correspondence, and the officer incharge of the department had close touch with envoys sent to and received from foreign states (*Adab-ul Harb*, pp. 142-43). During the reign of Aurangzeb Danishmand Khan was appointed as special officer to take care of the envoys (Manucci, II, pp. 175, 177). See also Bernier, pp. 116-23. Sometimes they were provided Persian interpreter to help them in their conversation with the Indian people as well as the state-officials. (Monserrate, p.9)

2. *The Embassy of Sir Thomas Roe*, Purchas, IV, p. 328; *English Factories*, I (1618-21), pp. 34, 38-39; *Letters Received*, I, pp. 236, 258; Manucci, II, pp. 32-34.

3. From the instructions issued by Aurangzeb to Abdullah Beg about the manner of receiving and treating an envoy of Shah Abbas, the king of Persia, it is clearly stated that it was a continuous practice from the reign of Akbar that the Mughal Emperor received a letter of credence from envoys through the *wazir* (Manucci, II, pp. 34, 43-45, 47).

4. Manucci, II, pp. 140-42.

An envoy was expected to be familiar with the local etiquettes before presenting his credential to the head of the state. To furnish an envoy with necessary information and knowledge about them he was kept under the master of ceremonial (mir-i tuzuk) for sometimes after his arrival. Only when he gave his consent to observe the court etiquettes he was granted opportunity to have an interview with the emperor.[1] While presenting his credentials an envoy was required to observe the etiquettes of the Mughal court, i.e., prostration (zaminbose) or making obeisance (kornish) before the Emperor. Sometimes an envoy was permitted to greet the Emperor first in accordance with the tradition of his own country and then in the

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1. Akbar Nama, II, p. 173; III, pp. 734-7; Tuzuk, p. 32. Khan-i Alam, Jahangir's envoy to the Shah of Persia had also to perform Kornish before the Shah. (Iskandar Beg, Alam Arai Abbasi, Tehran edition, II, p. 939). Giving details about the court etiquettes to be followed by the ambassadors, Manucci states, "He (Aurangzeb) received the ambassadors with affection and goodwill on condition that they made obeisance as usual in India by putting the hand on the head and lowering it three times almost to the ground. The ambassadors agreed to the condition and on entering into the royal presence they made obeisance as agreed upon and when they wished to draw near, the second Secretary, called Mustafa Khan, stopped them and taking letter from their hands, presented to the king, by whose orders they were made over to Jafar Khan, the Chief Secretary with the instruction he should in due course prepare a reply." (Manucci, II, pp. 32-34), see also Ibid, pp. 43-44, 47, 57, 144 .

style prevalent at the Mughal court.[1] An envoy, however, was granted total exemption from the customary obeisance to show special regard towards the country which he represented.[2]

The ambassadors were also provided official residence by the state during his stay in the country. The visiting envoys were generally lodged at the court itself but the resident ambassadors were provided with big apartments.[3]

Besides bearing the expenses of the envoys, the state also assigned land to the resident-ambassadors in

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1. Manucci, II, p. 57.

2. Jahangir is reported to have exempted Abdur Rahim, the Turanian envoy from all the court etiquettes as a special favour towards him. <u>Iqbal Nama-i Jahangiri</u>, p. 612.

3. Zambil Beg, the Persian resident-ambassador at the court of Jahangir was given one of the royal residences near Lahore (<u>Tuzuk</u>, p. 333). (Jahangir had great affection for the Jesuit Fathers for whom house and church were built at Lahore (Manucci, I, p. 175). Budaq Beg the Persian envoy to Aurangzeb's court was lodged at the <u>haveli</u> of Rustam Khan in Delhi which had been lavishly furnished with the state expense before his arrival. (<u>Alamgir Nama</u>, p. 623). According to Manucci the envoys from Balkh were given the house of Lutfullah Khan in Delhi where they stayed about four months.(Manucci, II, p. 34. See also Bernier, pp. 116-23.)

certain cases.[1] The assignment sometimes consisted of several villages. Even after their departure from the country they were entitled to the revenues from the land assigned to them. Jahangir granted to Zambil Beg (the Persian ambassador) a village near the Capital which earned him an annual income of Rs. 16,000.[2]

The Mughal emperors did not charge any kind of duty on valuables of the envoys at the time of their arrival or departure.[3] Great liberty was granted to the envoys in this regard but the foreign dignatories sometimes abused it to gain commercial profit. The prince of Basra sent an envoy to the Mughal court to congratulate Aurangzeb on his accession. He brought with him several Arab horses: some intended for presentation to the emperor and others for sale. With the money so

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1. Jahangir had granted Rs. 15,000 to Yadgar Ali, the Persian envoy, to meet his expenses during his stay in India. (Tuzuk, p. 116). Hearing the news of the arrival of Zambil Beg, the emperor sent him Rs.30,000 for his expenses and ordered the governor of Lahore to bear all expenses incurred on entertaining Zambil Beg (Tuzuk, pp. 315-16). The envoy from the Prince of Basrah was paid full expenses incurred by him during his stay in the country (Manucci, II, p. 107).

2. Tuzuk, p. 333. Sultan Alauddin is reported to have bestowed four villages on Rashiduddin, the envoy of Khwarizm Shah and directed the revenue officials to remit their revenues after his departure to his homeland through reliable merchants. (Makatibat-i Rashidi, p. 167).

3. Maasir-i 'Alamgiri, p. 20.

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acquired he was to buy cloth and some other goods to take with him to Basra free of duty.[1]

The exchange of presents among the heads of the friendly states through the envoys was one of the accepted practices and a part of international conventions in the medieval period. The Mughal Emperors accepted the presents sent through the envoys by the friendly rulers.[2] They also sent costly presents to their counterparts through their envoys.[3] Manucci observes that any present made to an Emperor was accepted by him in his capacity of a sovereign. He believed that these gifts were his private property as homage was rendered to his supreme majesty. Manucci, further, states that even the presents from the ambassadors were treated by the emperor as such.[4]

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1. Manucci, II, p. 107. It is not clear what action was taken by the Mughal government against the envoy who was found indulging in the above malpractice or abusing the privilege.

2. According to the Islamic law there is no harm in accepting presents from and sending to rulers of the alien states. However, no impliment of war should be sent as present to an alien ruler and the presents received from the foreign rulers are to be deposited in the public treasury and spent for the welfare of the Muslims in general. (Fatawa-i 'Alamgiri, II, pp. 272 Tabari, III, p. 447).

3. The Sharif of Mecca is reported to have refused to accept presents sent by Aurangzeb in his early reign on the ground that he could not be recognized as the legitimate ruler in the lifetime of his father. But after Shah Jahan had passed away he sent his envoy to Aurangzeb and showed his willingness to accept his offerings if sent to him. (Maasir-i Alamgiri, p. 49; Manucci, II, pp. 106-7).

4. Manucci, II, p. 321.

As far as the property of a deceased envoy was concerned it was to be treated like that of a *mustamin* (the foreigner granted a safe conduct) who died within the Muslim territory.[1] The property of a deceased envoy as a rule was entrusted to his heirs, provided they were present in the country. Otherwise it was sent through his countrymen to his heirs living in their home land. If no national of the deceased's country was available, his property was kept into the custody of some judicial officers till such time that some one amongst his heirs or countrymen appeared to claim it. Muhammad Riza, the Persian envoy to the court of Jahangir, died at Agra in 1617. His property was sent through Muhammad Qasim, a merchant of his own country to the Shah of Persia to be apportioned to his heirs.[2] On his way to Delhi from Agra in 1656, Bellomont, a French envoy, passed away. His property was handed over to two Englishmen who claimed relationship with the deceased. Later on, it was discovered that their claim was false. The property was recovered from them at the imperial order and given to a merchant of Surat who furnished proof that the deceased had taken from him four thousand patacas and some other things as loan.[3]

1. See Supra, p.178

2. *Tuzuk*, p. 197.

3. Manucci, I, pp. 69-70; *Pepys of Mogul India*, pp.40-45. Aurangzeb is reported to have kept an Arab horse out of his property for his personal use and paid its price to the merchant. (Ibid.)

Cases of some other envoys dying in India during the Mughal period are on record, but there is no reference as to what happened to their property.[1]

PIRACY

Piracy signifies "every unauthorised act of violence committed by a private vessel on the open sea against another vessel with intent to plunder." But in its wider sense it is used for "every unauthorised act of violence against persons or goods committed on the open sea either by a private vessel against another vessel or by the mutinous crew or passengers against their own vessel."[2]

That the Mughal government had to face the problem of piracy from the very beginning of the establishment of the European trading companies in India is evident from a number of references in the contemporary sources. Even its pilgrim ships were not spared by the pirates. Aurangzeb is reported to have created a naval force to check the menace of the pirates. But the Mughal navy did not come upto the standard of the navies of the

1. Akbar Nama, III, p. 582; Badauni, II, p. 375; 'Alamgir Nama, I, pp. 662-65, 673; Manucci, II, pp. 34-44.

2. Oppenheim, pp. 608-9.

European nations, as it lacked the experienced naval officers to conduct the operations.[1]

Piracy was committed for various motives. Sometimes recourse was taken to piracy to take revenge against the treatment meted out to the European factors on land by the Mughal authorities, and at others to strike terror for securing certain trade concession from the Mughal authorities. Occasionally rivalry among various trading companies or between Indian merchants and certain foreign company motivated the acts of the piracy.[2] Whatever have been reason for piracy, it is clear from the available cases that usually the target of the pirates, were cargoes and ships. Her crew were not interfered with unless resistance was offered by them.[3]

As for the punishment awarded by the Mughal government for piracy[4] it is difficult to form an opinion as in the

1. Manucci, II, pp. 40-42; *Fathiyya-i Ibria*, ff. 407, 424; Tavernier, I, p. 177; Manrique, II, p. 278; *English Factories*, V (1634-36), p. 310.

2. The expanding overseas trade of the Indian merchants during the second half of the seventeenth century alarmed the English. Out of jealousy they tried to hamper their commercial enterprise by a series of piratical attack on the Indian ships.

3. *English Factories*, V (1634-36), p. 199.

4. In the Islamic law piracy is treated identical with the highway robbery and so both are considered the same in the matter of punishment.

available cases no reference is made to any direct action having been taken against the pirates. Only the punishment inflicted on the factors and other members of the trading company of the country to which the pirates belonged finds mention in the records.[1] It appears from a number of cases that under the Mughals the officials and members of the trading companies were held responsible for piracy committed on Indian ships by their country men and they had to pay compensation for the loss of cargo. In case of their reluctance to pay compensation they were imprisoned or threatened with reprisals.[2] Sometimes an embargo was put on their commercial activities. An agreement concluded between the Mughal authorities and the English chief in 1612 states that the English who were engaged in commercial activities in the country (India) would no longer be responsible for the piracy committed by the people of their own country (England) and also not liable to pay compensation for the loss of cargo. In spite of this agreement the old practice of punishing the factors of the trading companies continued as may be seen in the following cases.

Some Portuguese pirates attacked and plundered the goods of an imperial ship to the value of £ 100,000,00 in 1614

1. This might have been due to the fact that the pirates could not be apprehended.

2. Purchas, IV, pp. 125-27.

at Surat. Jahangir ordered the seige of the city of Daman (an establishment of the Portuguese) the arrest of all the Portuguese nationals and confiscation of their property within his dominion. The Jesuit Chief, Father Xavier, then resident at the Mughal court was sent to the governor who was besieging Daman. The governor was instructed to deal with him as he deemed fit.[1] In 1636 three Mughal vessels containing cash and goods to the value of Rs. 100,000 were plundered and captured by some English pirates. The Mughal authorities demanded full compensation from Method, the Chief of the English company. On his refusal, he was imprisoned and restrictions were placed on the internal trade of the English. When he agreed to pay the compensation, he was released and the commercial freedom of the English company was restored.[2]

Some Portuguese pirates attacked an imperial ship (loaded with Kauris) in Bengal during the reign of Aurangzeb. The captain persuaded them to accompany the ship to the Mecca Port and promised to give there patacas instead of Kauris. On reaching the Meccan port, the capitain of the imperial ship tried to overpower the pirates with the assistance of some other

1. English Factories, II (1622-23), p. 96.

2. Ibid., V (1634-36), pp. 190, 232, 256, 270-71, 279, 315.

vessels. But he did not succeed, and suffered a great loss. The pirates, then returned to Surat to wait for imperial ships which were coming from Mecca. On their arrival, they captured a ship and plundered not only its valuable cargo but dishonoured the ladies on board. When Aurangzeb was informed of the incident, he resolved to check the menace of pirates permanently, by creating a naval force.[1] Some Arab merchants complained to Aurangzeb that during their voyage from Musqat to India certain English pirates had robbed them of some Arab horses near the port of Surat. The Emperor sent an order to the governor of the port, to arrest the pirates and send them to the royal court.[2] It is not clear what happened to them after trial. According to the same traveller a Mughal ship, while leaving the port of Bengal en route to Mecca, was captured by some Portugueses. The reason of the capture was stated to be the absence of a Portuguese passport. When Aurangzeb came to know it he ordered Qutub Khan, a military commander to raid in the neighbourhood of Daman and Bassain. The raid resulted in a great loss to life and property of the Portuguesses. Manucci commented that by this action Aurangzeb actually retaliated for the plunder of the imperial ships by the Portuguese pirates in the port of Surat.[3]

1. Manucci, II, pp. 40-42.

2. Ibid., IV, pp. 134, 215-16.

3. Manucci, II, p. 434.

A ship belonging to a wealthy merchant of Surat named Abdul Gafur, with a cash of nine lac rupees on board was ravaged by pirates in 1691 at the mouth of the Surat river. The Mughal government put a guard on the factory at Surat and placed an embargo on English trade in India. As the pirates had shown the flags of several nations the authorities were unwilling to take any stern action. When a member of the pirate-crew was captured and proved to be a Dane the restrictions placed on the English trade were removed.[1] While returning from Red Sea with the profit of seasonal trade, Ganj-i-Sawai, the imperial ship, was captured and plundered by Henry Every, the notorious English pirate. Besides the Haj pilgrims including ladies, the ship had valuable on board to the value of fifty two lac rupees in silver and gold. On being informed of the incident Aurangzeb ordered Sidi Yaqut to proceed to Bombay and imprison all English men in Surat and Broach. President Annesley and many other Englishmen were placed in detention. The East India Company was deprived of all commercial facilities which it enjoyed within the country. Later on, Itimad Khan, the governor of Surat and a friend of the British exposed that the pirates were of different nationalities and the English were not alone responsible for the plunder. So the detainees were set free and the commercial freedom of the

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1. C. John Biddulph, The Pirates of Malabar, London, 1907, p. 13.

company was restored.[1] Some pirates of different nationalities plundered a Mughal ship near the port of Surat and took away merchandise and cash valued at more than one million rupees in 1703. When Itibar Khan, governor of Surat came to know of the incident he ordered the arrest of the presidents of the English and Dutch companies both. He recovered Rs.5,077,00,00 from the Dutch and also some money from the English as compensation for the loss. In retaliation, the Dutch and the English blocked the port of Surat, seized all the Indian vessels and demanded the amount which had been realised from them in compensation. Seeing the determination of the Europeans, the emperor not only conceded their demand but also dismissed the governor and other provincial officers.[2]

It appears from the above cases that under the Mughals varied treatment was meted out to the pirates. Realisation of the compensation for the loss of cargo and damage to the ship was a prevalent practice. The imprisonment of those who were responsible for piracy was a resort to facilitate the recovery of the compensation.[3]

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1. Khafi Khan, II, pp. 421-22; C.J. Biddulph, pp. 26-27.

2. Manucci, III, pp. 463-64.

3. It is interesting to note that in the same period in England and France the pirates were capitally punished and if they escaped, their property including their wives was confiscated. _English Factories_, X (1655-60), p. 205; Manucci, IV, pp. 159-60; _A Pepys of Mogul India_, pp. 268-69.

Espionage

For the smooth working of the government machinery, it is necessary for the ruler to keep himself acquainted with day-to-day happening in different parts of his dominion. This purpose can be achieved by employing news-writers and intelligence officers. This system of seeking secret information has been adopted by every government in medieval as well modern period for administering the affairs of the state effectively. It does not come under the jurisdiction of international law. But passing of secret information of a country to another country which endangers the peace and security or undermines the general interest of that country is known as espionage and treated as a punishable crime in the international law. In this context the word 'spy' denotes all those persons who obtain or attempt to obtain secret information for transmitting it to the enemy.

While giving permission to a foreigner to stay in a Muslim country, the authorities are required to see that he is not a spy or he is not entering the country with the intention of helping his own government at the cost of the Muslim country.[1] The jurists have different opinions about the kind of punishment to be given to the spies. Abu Yusuf is of opinion

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1. Kitab-ul Kharaj, pp. 187-88.

that non-Muslim spies, whether alien or subject, must be given capital punishment while the Muslim spies be given corporal punishment and imprisoned till they showed repentence.[1] Imam Muhammad thinks that the subjects of Muslim state (irrespective of their being Muslims or non-Muslims) should not be killed for espionage. But with regards to aliens he also favours execution.[2]

Espionage was an offence against state and was treated as such under the Mughals. So the punishments were those which seemed appropriate to the occasion and crime. Few cases of espionage which formed a part of international crime have come down to us from the Mughal period. They give us an idea of the treatment meted out to the spies in those days. In the reign of Akbar two Portugueses, suspected to be spies, were caught by the custom officials at Surat. At interrogation they confessed that they were spies. They were offered a choice between Islam and death punishment. On their refusal to accept Islam they were executed by the order of the governor.[3] In 1696

1. Kitab-ul Kharaj, pp. 189-90.

2. Sharh-us Siyar il Kabir, IV, pp. 225-26. In matter of punishment no distinction would be made between a male or a female spy. But a minor is not to be given capital punishment. (Ibid., pp. 226-27).

3. Monserrate, p. 189.

some people were arrested by the governor of Kabul on suspicion of their being spies and sent to the court. Aurangzeb ordered a thorough investigation of the case. During interrogation, one of the investigating officers (Itimad Khan) was killed by one of the spies. In retaliation the spy was also put to death by the servants of the said officer.[1]

In 1667, the ruler of Bukhara sent a woman spy to the Mughal court with his ambassador. She was detected. When she confessed her guilt she was ordered to be imprisoned and kept under strict surveillance.[2] Ten spies of the Maratha leader, Sambha were arrested in 1682 and at their own confession they were executed by the imperial order, for espionage.[3] While on an expedition against the Marathas, Prince Shah Alam had issued an order that anyone entering or leaving the camp at night would be killed without fail. According to Manucci the order was a precautionary measure against the spies. The Prince wanted to frighten them and hinder them from prowling about and spying into the camp. Once certain vendors including some Christians, who had come from Goa, were captured for violating the ordinance. They

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1. Maasir-i 'Alamgiri, p. 57. It is not clear whether this action had state sanction or not. However, the punishment was apparently awarded for murder and not for espionage.

2. Jaipur Akhbarat, 3rd Sept. 1667.

3. Ibid., 4th June, 1682, vide S.P. Sangar, Crime and Punishment in Mughal India, Delhi, 1967, p. 199.

were ordered to be beheaded; but on Manucci's representation to the Prince, the Christians were pardoned and set free.[1]

In view of the above discussion it may be concluded that the well-defined rules existed during the Mughal period for guiding their relations with the foreigners - merchants, travellers and envoys. They laid down rules for the protection of life and property of the foreigners and enacted laws for disposal of their cases. To regulate the foreign trade agreements were made at different times between the Mughal authorities and the representatives of the foreign trading companies. The envoys and ambassadors were treated with under established norms and conventions. The rules were also not lacking to deal with the piracy and espionage.

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1. Pepys of Mogul India, pp. 189-90.

Chapter VI

The Agrarian Law : Nature of Landed Property (Views of two Scholars of the Mughal Period)

The proprietorship of land in Mughal India is a much debated issue. The opinions of the medieval as well as modern scholars are divided about this problem. Various scholars at different times hav e devoted their attention to analysing the information available in chronicles, administrative and revenue literature of the Mughal period. There is, however, another body of literature which has something to offer on the subject. The Muslim theologians and jurists of India attempted to fit the actual agrarian system and relations in India into the framework of the Islamic system. In such attempt they have acted not only as interpreters of law, but they have also discussed certain aspect of the agrarian conditions prevailing in their own times.

There are two very interesting treatises from the Mughal period which contained views of two scholars about the nature of land rights in India. In these works an attempt has been made to interpret the existing agrarian relations in terms of Islamic laws. The first treatise, Risala dar bai Arazi,[1] was written in Arabic by

1. A manuscript of the treatise is preserved in the Maulana Azad Library (AMU., Aligarh), Shaifta collection, Fiqh-Arabia, 24/26. The Library of Dar-ul-Musannifin (Shibli Manzil, Azamgarh) also has one copy of the work. The treatise has been translated into Urdu by S.A. Nadvi and published with the title, Tahaqquq-i-Arazi-i-Hind from Karachi in 1963. But the printed text contains several inaccuracies and the translation is also misleading. I have mainly relied on the Aligarh Manuscript.

Shaikh Jalaluddin Thanesari[1] and the second, Ahkam-ul Arazi,[2] was written by Qazi Muhammad Ala Thanwi. The latter is also mainly in Arabic, but its last chapter dealing with India is in Persian. Here we will take up their views about the nature of proprietory rights in land in India and the arguments forwarded by them to justify their opinion. But before taking up this matter it is essential to know some facts about the life and background of the compilers to understand the factors guiding their views.

Shaikh Jalaluddin was noted for learning, piety and devotion to mysticism. He remained occupied throughout his life with the task of teaching, propounding legal opinions (Fatawa) and compiling books.[3] He was the spiritual heir (Khalifa) of Shaikh Abdul

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1. For biographical note on the author, see Abdul Qadir Badauni, Muntakhab-ut Tawarikh, Vol. III, pp. 3-4; Abul Fazl, Akbar Nama, Calcutta 1886, III, pp. 341-42; Nizamuddin Ahmad, Tabaqat-i Akbari, Calcutta, 1931, II, p. 473; Abdul Haq Dehlawi, Akhbar-ul-Akhyar, Delhi, 1283. A.H. II, p. 345; Ghausi Shattari, Gulzar-i Abrar (MS. Aligarh), Habibganj, 22/5/f.273; Dara Shukoh, Safinat-ul Auliya, Lucknow, 1872, pp. 171-2; Ghulam Sarwar, Khazinat-ul Asfiya, Lucknow, 1873, p. 439 & Sayyed Abdul Hai, Nuzhat-ul Khawatir (Arabic), Hyderabad, 1954, IV, p.72
2. Ahkam-ul Arazi remains unpublished. Two manuscripts of the treatise are available in the M.A. Library (AMU., Aligarh), Abdus Salam, Arabia, No. 331/171 & University collection, Arabia, Mazhab (2) No. 12. The India Office Library also has one manuscript (Reuban Levy, No. 1730). I have used the Aligarh Manuscripts.
3. Besides Risala-dar-bai-Arazi, other works ascribed to him are Irshad-ut-Talibin (a treatise on mysticism) & Risala-i-Tafsir-i-sura-i-wat-tin (a Persian commentary on the 95th chapter of the Quran). See Ethe, 1924.

Quddus Gangohi, the famous saint of the Sabri Chishti order (1456-1537 A.D.). In the Maktubat-i Quddusiya a collection of Abdul Quddus's letters) most of the letters are addressed to Shaikh Jalaluddin. From the study of these letters, the reason for writing the Risala becomes clear and even his own anxiety about establishing the rights of the grantees over their holdings becomes obvious. It appears from one of these letters that Shaikh Abdul Quddus sent Jalaluddin in company with his son Shaikh Ahmad to Agra to solicit a land-grant from Humayun.[1] For the second time, he came into contact with the Court in 1561 when he visited Agra to plead the cause of the grantees at Thanesar.[2] Akbar visited Jalaluddin with Abul Fazl in 1581 when he was leading a secluded life. Akbar is said to have had a discussion with Jalaluddin on certain principles of mysticism.[3] Jalaluddin died in January 1582.[4]

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1. Maktubat-i Quddusiya, Delhi, 1307 A.H., (Letter No. 122) p. 339.

2. Badauni, III, p. 4. Thanesar, Jalaluddin's home town was in the Sarkar of Sirhind (Suba of Delhi) Ain-i Akbari, II, p. 145. Presently it is in the Ambala District, Haryana.

3. Akbar Nama, III, pp. 341-42; Iqbal Nama-i Jahangiri, II, p. 345.

4. His age at the time of death has variously been recorded by the biographers as Abdul Haq gives 95 years, Gausi Shattari 110, Dara Shukoh 96 and Abdul Hai 93 years.

Notable among Jalaluddin's disciples were Nizamuddin Thanesari, Abdush Shakur and Qazi Muhammad Salim of Kairana.

Risala dar bai Arazi is mainly focussed on the rights of grantees (holders of madad-i-maash) over their lands, though it has also taken up different aspects of the agrarian matters. The significance of the Risala becomes clearer when it is studied in the light of the controversy going on in the 16th century about the nature of revenue grants and the rights of their holders.

The nature of the rights of the grantees over their land was a controversial matter.[1] The state granted to the holders of madad-i-maash the right to collect land-revenue and to utilise it and considered it a resumable alienation of taxation rights. The grant was neither transferable nor saleable; it could be resumed at any time by the king; on the death of the grantee, it normally required the king's sanction before it could pass on to his heirs. Thus, according to the official view, the grantee had no proprietary rights.[2] This was not a new development that occurred in the

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1. A brief survey of the land rights and agrarian relations in medieval India is here taken up to facilitate understanding of controversy which arose during the Mughal period.

2. Cf. Irfan Habib, The Agrarian System of Mughal India, pp. 299-304.

Mughal period. The same view regarding the revenue grant was held by the Sultans of Delhi. They used to make liberal grants to the deserving persons but reserved the right to cancel, confirm, decrease or extend the original grant. On his accession, Alauddin Khalji confirmed the existing revenue grants to their holders.[1] But when he introduced administrative reforms he resumed most of the grants.[2] Ghiyasuddin Tughluq is also said to have resumed a very large number of grants.[3] Firuz Shah restored the grants which had been resumed during his predecessors' reign to the old grantees after investigating the validity of their claim.[4]

In the Afghan period (1451-1555) the revenue grants came to be popularly known as Wajh-i-ma'ash, but there seems to have appeared no change in the non-proprietary nature of the grant. The official documents of the period again tend to suggest that the grants were held during royal pleasure

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1. Ziauddin Barani, Tarikh-i-Firuz Shahi, p.248.
2. Barani, p. 288.
3. Ibid., pp. 438-39; Isami, Futuh-us Salatin, Madras, 1948, pp. 391-92.
4. Futuhat-i Firuz Shahi, p. 16; Barani, p. 558.

only and on the death of a grantee they could be restored to his descendants, provided they succeeded in obtaining renewal from the royal court. Like Alauddin, Sher Shah also resumed the old Wajh-i-maash grants and restored to the grantees after he had satisfactorily ascertained their genuine claims.[1]

The nature of the grants during Akbar's reign has been more clearly explained by Abul Fazl in a chapter on Suyurghal in the Ain. It appears from Abul Fazl's discussion that effective measures were taken to regulate the grants after thorough enquiries; but apparently, the basic features of the grants remained intact except the fact that the eligibility for the grant was extended to include the non-Muslim divine as well.[2]

As opposed to this official view, a group of scholars representing the grantees considered that the grants carried full proprietary rights and that the steps taken by the state to regulate the grants were an interference in the

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1. Sher Shah's farman, printed in the Oriental College Magazine, Vol. IX No. 3 (May, 1933) pp. 121-26; Rizqullah Mushtaqi, Waqiat-i Mushtaqi, Rotograph No. 3 (MS: B. Museum, Or. 1929) Research Library, Dept. of History (AMU., Aligarh), f. 49 b. See also I.H. Siddiqi, History of Sher Shah, Aligarh, 1971, pp. 128-38.

2. Ain, 1, pp. 140-41; Akbar Nama, III, p. 240; B.N. Goswamy, The Mughals & the Jogis of Jakhbar, Simla, 1967, pp. 57, 78, 114, 126.

established rights of the grantees. Whenever the state curtailed or resumed their grants they showed their resentment and pleaded strongly for treating their rights as sacrosanct. Shaikh Abdul Quddus Gangohi (Jalaluddin's own preceptor) offers a characteristic illustration of the attitude of the grantees. In a letter to Sultan Sikandar Lodi, he drew his attention to the grievances of the a'imma (grantees) that they were being deprived of their subsistence and stipends.[1] Babur's attention was also drawn by the saint to the plight of the grantees and the resentment showed by them against his decision to realise 'ushr from their khwud-kashta (self-cultivated) lands.[2] After Shaikh Abdul Quddus's first effort through his eldest son Hamiduddin and his friend Abdur Rahman to solicit a grant from Humayun had failed, he again made a representation to the emperor for the same through his son Shaikh Ahmad and his close disciple Jalaluddin. But the latter mission seems to have also failed.[3]

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1. Maktubat-i-Quddusiya (letter No. 34) pp. 44-46. Probably, Abdul Quddus wrote this letter after the Wajahdars of Afghan regime had begun to usurp the revenue grants falling within their assignments. Cf. I.H. Siddiqi, p. 136.

2. Maktubat, (Letter No. 169) pp. 335-37.

3. Maktubat, (Letter No. 172) p. 339. For a full discussion of the controversy between Abdul Quddus and the state regarding revenue grants, see Iqtidar Alam Khan 'Shaikh Abdul Quddus Gangohi's relations with political authorities : A Reappraisal, Medieval India-A Miscellany, Vol. IV, pp. 73-90.

Thus it is evident that the controversy regarding the nature of the revenue grant existed even before Akbar's reign and that Jalaluddin was attracted to the problem by the strong views of his preceptor besides his own interests were at stake as he was also a grant-holder.

Jalaluddin's two visits to the Court[1] in connection with revenue grants are important in considering the origin of his Risala, for here too, he strongly pleads for the full proprietary rights of the grantees.[2] Though he makes no direct reference to the state policy toward the grantees, but in the very beginning of his discussion, he criticises those contemporary scholars who did not consider legal for the grantees to alienate their lands[3] by sale, transfer, or mortgage. He does not support their view that the early conquerors had restored lands after initial conquest to the former owners and that the latter or their descendants remained lawful owners in post-conquest period. So if a piece of land is granted out of the conquered

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1. See Supra, p.216

2. The actual date of compiling the Risala is not given anywhere; but it is most likely that it was written some time in the first decade of Akbar's reign, when Jalaluddin came to Akbar's Court on behalf of the grantees. But since the divine died in 1582, it could well have been written at any time before that year.

3. Risala dar bai Arazi, ff. 1b-2a.

dominions to a deserving person, it would not become the property of the grantee. Since these scholars considered the lands which were in possession of theologians and scholars as inalienable, Jalaluddin came forward with his treatise refuting their opinion as is apparent from its name, _Risala dar bai Arazi_ (meaning, a treatise about the sale of lands).

The whole discussion of Jalaluddin revolves round the hypothesis that the major portion of the lands in India consisted of waste land and of ownerless property, so it belonged to the _baitul mal_.[1] If the ruler, in his capacity of the trustee of the _Bait-ul mal_ granted some lands out of it to a deserving person[2] and the latter by cultivating it became its owner, the land in the opinion of Jalaluddin could be sold or alienated by the grantee in anyway he liked.[3]

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1. _Baitul mal_, theoretically, signifies the treasury of the Muslim State, where proceeds of the lawful taxes and revenue, and of heirless property are deposited. (_Kitab-ul Kharaj_, p. 124; _Kanz-ul Ummal_, III, p.163; Mawardi, p.126; Aghnides, pp. 421-22). In Mughal Empire, it denoted the institution for distributing charitable grants, allowances among poor and needy (Badauni, II, pp.390-91; _Mirat_, I, pp.267, 293, 338, 340; _Ruqaat-i Alamgiri_ (Letter No. 107) p. 29.

2. The designation 'deserving person' (mustahiqq) is apparently meant by the author to cover the '_ulama_ and theologians as was generally the usage in the medieval literature.

3. Jalaluddin has apparently based his opinion on the established rule of the _shariat_, that, if the _Imama_ granted waste land (_mawat_) to a deserving person and he cultivated it with the permission of the _Imam_, it would become the property of the grantee with full rights of ownership. (_Hidaya_, II, pp.567-68, Waliuddin Abdullah Muhammad bin Abdullah Baghdadi, _Mishkat-ul masabih_, Karachi, 1330, A.H. p. 255).

The arguments given by Jalaluddin in support of his view seem to be hypothetical. The first set of his arguments is that India was forcibly conquered about four hundred years ago[1] is a well-known fact established by the authentic sources. But there is no evidence to show that the land was ever distributed among the victors (ghanimin) or restored by the conquerors to the original owners after the initial conquest. Jalaluddin further goes on to argue that in such case the land could neither be designated as ushri nor kharaji and therefore the occupants could not be recognised as owners.[2] He refutes the ownership of the present occupants of land on the basis of the circumstances prevailing in post-conquest period. According to him the present occupants of land could not be recognized as legal owners, because their ancestors from whom they had inherited the land were themselves not lawful owners. In support of this assumption he says that most of those people who were originally occupying the land before the conquest either perished

1. The scholar does not give his source of information.

2. According to the Hanafites, in a territory conquered by force, the ruler has the option to distribute the land among the victors (ghanimin) or to restore it to the former owners in return for kharaj. In the first case, the land would be designated ushri and in the second kharaji. (Mawardi, p. 122; Aghnides, p. 369).

during the operation or died due to epidemic or famine. Those who remained alive migrated from their original holdings and settled at different places, thus losing all claims on land previously occupied by them. Consequently, that land remained abandoned and devoid of any known owner. That land thus having fallen vacant was occupied by a new set of people without the permission of the ruler; so neither they nor their descendants could be treated as lawful owners. If it is assumed that in some places the occupants of land are really the descendants of those persons who were original occupants in pre-conquest period, it is doubtful, because in view of Jalaluddin a long time had elapsed since the initial conquest the heirs of the original occupants were no longer traceable and moreover the falsehood had become a common thing in those days.[1]

The author is not prepared to accept the assumption of some scholars that the land had been restored by the early conquerors to the former owners and so their descendants (who are now occupying the land) may be considered as owners. The author rejects this assumption on two grounds. First, it was against the interest of the state to restore the ownership of the lands after conquest to those persons who demonstrated defiance

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1. Risala dar bai Arazi, ff. 2a-b, 10a.

and disobedience. Secondly, the circumstances leading to the occupation of their own land or other's land after the conquest militates against the fact that the restoration was properly done to them. The restoration (*taqrir*) according to him, implied that the original occupants or their descendants were authorised by the ruler to hold in their possession what they actually held in ownership before the conquest. He disputes the view that the restoration ever took place actually.[1]

He goes on to argue that even if it is conceded that the early conquerors did restore the land to those persons who were occupying it before the conquest, there is no evidence to suggest that the persons occupying the land in his own time were actually the descendants of the original owners.[2] In this reference he takes the case of the Ranjars[3] (Ranghars) who were

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1. Ibid., f. 2b.

2. Ibid.

3. 'Ranjar' had been converted into Arabic from 'Ranghar' as explained by the author himself in the marginal note (f.10b). '*Ain* (II, pp. 137-45) designates them as the *zamindars* of pargana Thanesar (*Sarkar* of Sirhind) and Karnal (*Sarkar* of Delhi). Jalaluddin has used the Ranghars for a non-Muslim caste and he does not specifically say that they were still non-Muslims in his own day. Some of the modern writers, (J.Malcolm *Memoirs of Central India*, II, p. 191 and H.H. Wilson (*Glossary of Judicial and Revenue Terms*, Delhi, 1968, p. 438) consider them Hindu Rajput. Whereas some others (Ibbetson, *Panjab castes*, Lahore, 1916, p. 139 and W. Crooke *Tribes and castes of North Western India*, Delhi, 1975, IV, pp. 227-28) declare them to be Rajput converts to Islam.

living and contemporaneously occupying the land in his areas (the region of Thanesar) refutes their claim to ownership of the land on the basis that they were not the genuine descendants of those people to whom the lands had been allegedly restored. According to him what actually happened was that the dominant groups of the Ranghars — Chauhan and Tomar — expelled the weaker groups of the Ranghars — Kundiar and Brahman — from their villages and occupied their lands. So he concludes that the descendants of the later occupants could not be recognised as owners of the land occupied by them through expulsion of the original occupants.[1]

The author tries to reinforce his view by still another argument. He takes advantage of the controversy that existed among the Muslim jurists regarding the restoration of land to the original owners after the forcible conquest. Contrary to the Hanafites, the Shafiites considered the act of restoration illegal because the ownership of the victors over the conquered land was established with mere conquest and the restoration would

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1. Risala dar bai Arazi, ff. 10a-b, At other place in the same work the author has depicted occupation of land by the Ranghars in Thanesar in a different way. He states, "the forefathers of the Ranghars (of his own times) used to collect land tax from the peasantry in pre-conquest period and spend it on their troops. Only few of them were cultivating themselves. This is handed down from generation to generation. After the Muslims conquered the territory and set up their rule, the Ranghars included themselves among the peasantry and took certain lands from the original cultivators on account of their authority previously exercising over them. The tillers handed over land to them because of their respect for and fear from them." (Ibid., ff.13b-14a.) The author is of the opinion that most of the Ranghars had occupied the land through this way and obviously this kind of occupation could not establish their ownership in the land.

imply that they were being deprived of the proprietary rights. Further, if the land was restored to them the land tax (kharaj) collected from it could not be a proportionate compensation for the loss of proprietary rights. The Hanafites, however, consider the restoration lawful on the basis that Umar, the second caliph, had restored the land of Sawad of Iraq to the original occupants after the conquest, in consultation with the companions of the Prophet (Sahaba). The main point of difference between both the schools of jurisprudence is that the Shafiites, contrary to the Hanafites, do not recognise the proprietary rights of the occupants, even after the ruler had restored the land to them.[1]

By highlighting the above controversy, the author means to stress that even if the restoration of the land had taken place it would be better and more expedient for the present ruler to act upon the opinion of the Shafiite, annul the restoration done by the former rulers and cancel the ownership of the present occupants (i.e. descendants of the original owners). Referring to the several compilations on Islamic Jurisprudence[2] and legal verdicts

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1. Risala dar bai Arazi, ff. 3a, 6a. The controversy discussed by the author is supported by the legal compendiums. [See Hidaya, II, pp. 544-45; Kitab-ul Umm, IV, p. 103 and also Aghnides, p. 497.

2. Some of the well-known works referred to by Jalaluddin are as follows; Ahmad bin Muhammad at Quduri (d. 1036 AD), Mukhtasar-ul Quduri; Fakhruddin Hasan bin Mansur Qazi Khan (d. 1196 A.D.) Fatawa-i Qazi Khan, Burhanuddin Ali bin Abu Bakr Marghinani (d. 1197 A.D.) al Hidaya; Hafeezuddin Abul Barkat Abdullah bin Ahmad Nasafi (d.1310 AD) Kanz-ud Daqaiq; Qarakhan, Fatawa-i Qarakhani (14th Century) & Alim bin Ala Hanafi, (d. 1397 AD), Fatawa-i Tatarkhani.

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of some of the contemporary scholars,[1] he invokes here the right of a ruler (Imam) to choose one of the authoritative opinions on a legal problem, where there is disagreement among the learned jurists (mujtahids). He substantiates his point by referring to the well-known rule of the shariat that a Muslim ruler, like a qazi was permitted to exercise his choice in the controversial matters and that his decision based on an authoritative opinion would be lawfully binding.[2] He further emphasises the point that a Hanafite ruler or qazi on account of expediency is permitted to act upon the opinion of Shafii in a disputed matter, especially when it appears to be in the general interest of the state and the Muslims.[3]

Continuing his argument, the author says that if the present ruler in pursuance of the opinion of Shafii, granted

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1. Notable among them are Qazi Muhammad Thanesari, Haddad Jaunpuri, Tayyab Budh & Muhammad Mufti. For biographical information about these scholars see Badauni, I, pp. 406-7; III, p. 154; Akhbar-ul Akhyar, p. 188; Gulzar-i Abrar, ff. 89, 278 & Nuzhat-ul Khawatir, IV, pp. 41-330.

2. Risala-dar-bai Arazi, ff. 3b, 5a, 6a-b, & 9a-b.

3. Risala dar bai Arazi, f. 6b.

a portion of the land (which had been previously restored to the former owner) to a deserving person as _madad-i maash_ it would be within his rights. The land so granted according to him, would be the property of the grantee. The former occupants would be devoid of all ownership in land and treated merely as cultivators working for the grantees who had been invested with proprietary rights.[1]

On this point the author was supported by some other scholars who had given legal verdict in favour of it. One such verdict was by Shaikh Tayyab Budh[2] who was consulted about the opinion of the learned theologians and _muftis_ of the _Shariat_ about certain _kharaji_ lands recovered by the _Imam_ due to some expediency, from possession of the occupants (to whom these lands had been restored by a former _Imam_) and granted to some deserving persons. Would such action of the _Imam_ be legal or not according to the _Shariat_; would the land be property of the grantee or not? The verdict given by the juris-consult was that

1. _Risala dar bai Arazi_, ff. 3b, 6b, 8a-b.

2. Tayyab Budh was a noted theologian and physician of Bihar. He was one of the arbiters in the debate that held among Shaikh Alai and other contemporary scholars about the _Mahdawi_ teachings of Mian Muhammad Husain Jounpuri during the reign of Islam Shah (1542-52 A.D.) (Badauni, I, pp. 406-7; _Gulzar-i Abrar_, f. 278.)

the recovery of the land (by the Imam) was legal and the land would become the property of the grantee to whom the Imam has given it.[1]

Examining critically the assumption of the contemporary scholars and discussing in detail the discretionary rights of the ruler in controversial problems, the author again turns to his original hypothesis and points out that the question of exercising the rights of ijtihad by the ruler would arise only when it is confirmed that the present occupants of the land were ~~recently~~ really the descendants of those to whom it had been restored by the former rulers. But this is not proved by any reliable source in view of death or dispersal of the original occupants as stated above. So the land, the author reiterates in conclusion, cannot be considered the property of the present occupants and it is to be treated as ownerless property belonging to the bait-ul mal.[2]

In spite of the fact that the author has vehemently tried to place the lands in India in the category of ownerless property, he is apparently not in favour of applying his conclusion to all kinds of lands of the country. He is of the

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1. Risala dar bai Arazi, ff. 8a-b.

2. Ibid., f. 10a.

opinion that lands in India are divided into several categories and it would be unreasonable to generalise the conclusion with regards to different kinds of land. The safe way in his opinion, is to differentiate among the various categories of land first and then to arrive at any definite conclusion.

Jalaluddin has divided the land into eight categories and discussed the nature of each category and the rights of its occupants. They are as follows.

(1) The land which came into the possession of the cultivator or his successors after the original cultivating-occupant had died without leaving behind any successor or migrated to another village. Then the second occupant died and his successor (or successors) occupied it and this practice continued for three or four generations. If his (the last occupant's successors claim the ownership of these lands, it was obvious that they could not be considered the legal owners of the land.

(2) The land occupied by the cultivators who had inherited it from their fathers or forefathers, and the latter had seized the land by conquest from the people who were (the original) cultivators of the land. The dominant group expelled the vanquished ones from their territories and lands during the period of instability (of the government). It is well-known that the land occupied in this way does not become their property.

(3) The land that the Imam gave to some of the victors or the deserving ulama or some other Muslims, and they cultivated it with the permission of the Imam; or the land which was conquered by some persons accompanying the Imam in the Dar-ul harb and was confered on them by the Imam, and they cultivated it with his permission. These lands would definitely become their property (milk) without any controversy and be treated as 'ushri.

(4) The land which remained neglected and uncultivated and its former occupants were either known or unknown. In the first case, (i.e. when the occupants were known) the land would become the property of the occupants and in the second (i.e. the occupants were unknown) it would not become the property of the present occupants without the permission of the Imam. This is in accordance with the opinion of Abu Hanifa, but his two disciples (Imam Muhammad and Abu Yusuf) do not consider the permission of the Imam as necessary.

(5) The land which was completely abandoned and devoid of any known owner. If such land was granted by the ruler to certain needy persons with permission to utilise the land-revenue, and it was cultivated by the latter, the land would become the property of the grantee and he could take the land tax legitimately.

(6) The land which was cultivated continuously, but its original owner was unknown. If the Imam gave this land to some deserving person as milk it would become the property of that person.

(7) The cultivable or uncultivable land to the lawful owner of which was known. If the Imam permitted any one else to cultivate it, the cultivator would not become its owner.

(8) The waste land with untraceable owners. If anyone cultivated such land with the permission of the Imam, the land would be the property of the cultivator.[1] But if some one cultivated it without the permission of the Imam, Abu Hanifa and his disciples (Imam Muhammad and Abu Yusuf) have a difference of opinion about it. According to Abu Hanifa the land would not become the property of the cultivator without the permission of the Imam. His disciples say that the cultivator would become the owner of the land even without the permission of the Imam.[2]

On the basis of this categorisation of the lands in India, the author concluded that the decision about the ownership of occupants of certain type of lands should be given only after the category of the land is definitely known. Dismissing the views of some of the contemporary scholars, he points out that a fatwa should not be issued in haste without thoroughly under-

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1. Risala dar bai Arazi, ff. 10a-11a.

2. Cf. Hidaya, II, pp. 267-68.

standing the matter.[1] Only those scholars were entitled to give legal verdict in his opinion who were adorned with the qualities of learned jurists (*mujtahid*). If they were not from amongst the learned jurists, they should have at least sufficient knowledge of the Islamic law and possess aptitude to give satisfactory answers to the legal questions.[2]

Notwithstanding the balanced view adopted by Shaikh Jalaluddin about the nature of landed property in Mughal India, he was after all in favour of recognising the proprietary rights of the grantees and refuting the ownership of those people who were occupying them since long time. He tried his utmost to prove that lands in India were mostly waste and ownerless coming under the category of the *mawat*.[3] So these lands, he concludes,

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1. Apparently, the author is referring here to the scholars who had given legal verdict in favour of the ownership of the original occupants of lands (as *Ranghars* living in the region of Thanesar) and denied the proprietary rights to the grantees (*Risala dar bai Arazi*, ff. 12a, 13b-14a).

2. *Risala dar ba'i Arazi*, ff. 11b-12a.

3. Referring to legal authorities, Jalaluddin defines *mawat*' as 'land with unknown owner.' He also explains it in another way, "The *Imam* conquered certain territory by force. He did not distribute it among the victors, but left it neglected or distributed some portion and left the rest undistributed. What was left undistributed was known as *mawat*." Quoting from the *Tatarkhani*, he writes: "if the ruler granted a portion of *mawat* land to a needy person and he cultivated it with his permission, he would become its owner. The sale and purchase of such land would be also valid.' (*Risala dar bai Arazi*, ff. 13a-b).

granted by a ruler to some deserving Muslim and cultivated by him with the former's permission ultimately would become ushri and the property of the grantee and the latter would be free to sell, mortgage or to alienate his land in any way he chooses.[1]

The second treatise, Ahkam-ul 'Arazi, compiled by Qazi Muhammad A'la Thanwi,[2] is divided into three section: the first

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1. It is interesting to note that Jalaluddin and some other theologians of medieval India considered the lands of the grantees as their personal property and classified it as ushri land but at the same time they wanted the grant lands should be exempted from the Ushr, which was a lawful tax levied on all lands held in proprietary possession by Muslims (Maktubat-i Quddusiya (letter no. 169), pp. 335-37).

2. We do not get much information about his life and work. The author of Nuzhat-ul Khawatir informs us on the authority of Maulana Ashraf Ali Thanwi (1863-1943) that Qazi Muhammad A'la was serving as the qazi of qasba Thana during the reign of Aurangzeb and his grave is located at the same place. Sayyad Abdul Hai, (1869-1923), Nuzhat-ul Khawatir, Vol. VI,p. 278. For a cursory reference to Muhammad A'la, see also Peter Bastami (1819-1881), Dairat-ul Ma'arif (an Arabic Encyclopaedia) Beirut, 1882, Vol. VI, p. 246, where his name is incorrectly recorded as Muhammad Ali. There is no evidence to show the date of death of Muhammad Ala. But it may be said certainly that he was alive in 1745 A.D. as it appears from the introduction to his other work, Kashshaf-o Istilahat-il funun (a comprehensive Arabic dictionary of technical terms relating to various branches of speculative and practical sciences) that he compiled it in that year. (Kashshaf-o Istilahat-il funun (MS Aligarh) Ulum-i Arabia No. 9/1, f. 1a). The work was published from Calcutta in 1882 and later from Cairo in 1963 in two volumes.

two sections comprise of the well-known regulations of the Shariat pertaining to dar-ul Islam, dar-ul harb, spoils of war and sources of bait-ul mal. The third section discusses the nature of land rights in Mughal India with which we are concerned.

While giving legal arguments in support of his view on the nature of the landed property, Muhammad A'la has quoted from a number of works on Islamic law, some of which are the compilations of the Indian scholars of the Sultanat and the Mughal period.[1] He has also liberally used Jalaluddin Thanesari's Risala dar bai Arazi, though he differs from him on several points. To corelate his views with the actual situation, he has made some very useful references to the conditions prevailing in his own time and to the practices followed by the rulers in India with regard to landed property.

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1. Some of the important works quoted by him are as follows:

   (a) Fatawa-i Qazi Khan compiled by Fakhruddin Hasan bin Mansur (d. 1196 A.D.). (b) Tabyin-ul Haqaiq written by Usman bin Ali Zailai, (d. 1342 A.D.), a commentary on a legal compendium known as Kanz-ud Daqaiq. (c) As-Siraj-ul Wahhaj written by Abu Bakr Bin Ali Haddadi (d. 1397 AD), a commentary on Mukhtasar-ul Quduri, a popular and concise treatise on Hanafite law. (d) Fath-ul Qadir written by Kamaluddin Muhammad bin Abdul Wahid (d. 1457 AD), a commentary on Hidaya the famous legal compendium of the Hanafite School. (e) Khazanat-ur Riwayat written by Qazi Jakkan Hanafi Gujrati (d. 1554 AD). (f) Fatawa-i Alamgiri compiled by a board of eminent jurists under the supervision of Shaikh Nizam (d.1679 AD) at the instance of Emperor Aurangzeb.

Muhammad Ala is in agreement with Jalaluddin's view that major portion of the land in India came under the category of owner-less and hence it included the property of the *bait-ul mal*. He does not make any special reference to the *madad-i maash* grant nor does he try to establish ownership rights of its holders. His discussion about the landed property is of a general nature and more relevant to the existing state of affairs. The main theme of Muhammad Ala's discussion in his treatise is that land in India can neither be designated as *Ushri* nor *Kharaji*, nor be considered as the property of the *zamindars* or of the cultivators (*riaya*). In putting across this view, he has partly based himself on the arguments given by Jalaluddin. He supports Jalaluddin's assertion that there was no evidence to show that the land was ever distributed among the Muslims after the initial conquest so it could not be designated as '*ushri*. Nor it could be treated as *Kharaji*, for there was no basis to hold the view that the early Muslim conquerors had actually restored the land to the original owners.[1]

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1. *Ahkam-ul 'Arazi*, f. 52b.

Proceeding from this point, Muhammad A'la again followed Jalaluddin's line of arguments in denying the ownership to the occupants of land in his own time. He thought that even if it was conceded that the early conquerors did restore land to the non-Muslims occupying it before the conquest, there was no certainty that the persons occupying land in his time were actually the descendants of the original owners. As a long time had elapsed since the initial conquest, the heirs of the original owners were untraceable.[1] What happened, in his opinion, was that most of the original owners disappeared from the scene without leaving any heir; some died during the operation of conquest, others perished later in famines and epidemics. Those who remained alive migrated to different places leaving their lands and thus lost claim on land previously occupied by them. The land falling vacant on account of the disappearance of the descendants of the original owners was, in his assumption, occupied by a new set of people without the consent of the ruler. These people, according to Muhammad A'la, could not be treated as the 'lawful owners of the land.[2]

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1. Ahkam-ul 'Arazi, ff. 52b-53a.

2. Ahkam-ul 'Arazi, ff. 53a. The whole situation depicted by the author is patently hypothetical for which no evidence has been put forward by him.

Apart from this, some other arguments have been given by Muhammad A'la in negation of '*ushri* and *kharaji* lands which are based on his own observation of the prevailing conditions. These are obviously more significant than the earlier ones. He disputed the view that the land in India could be treated as *Ushri* as it was mostly in possession of the non-Muslims and the Muslims never claimed ownership of these lands. Moreover the revenue collected from it was higher than one-tenth of the produce which was the prescribed rate for '*ushri* lands.[1] It is noteworthy that Muhammad A'la here differs with Jalaluddin who opines that the land falling under the category of grants (i.e. *madad-i maash*) held by the Muslims would be treated as *ushri* and *milk* (property) of the grantees.[2]

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1. *Ahkam-ul 'Arazi*, ff. 52a-b.

2. *Risala dar bai Arazi*, f. 10b. Aurangzeb's *farman* addressed to Muhammad Hashim, *diwan* of Gujarat (dated 1669 AD) also tends to suggest the existence of '*ushri* lands in India. Many of the regulations contained in the *farman* (e.g. articles III, IV, VI, XI & XVII) seem to imply that land in India was *kharaji* in some places and *ushri* in others, as they deal with both the situations and proceed from the assumption that in either case it was the property of those who were occupying them. For the text of the *farman*, see *Mirat-i Ahmadi*, I, pp. 283-88 and JASB. 1906, II, pp. 238-49. See also my article, 'Aurangzeb's *farman* to Muhammad Hashim'. '*Islamic Culture*', Hyderabad, Vol. 52, No. II, April 1978, pp. 117-26.

While developing his view that land in India could not be treated as _kharaji_, Muhammad A'la has made some interesting observations about the relationship between the ruler and peasants and the _zamindars_ and the peasants in ancient as well as medieval India. He specifically refers to to the attitude of the peasants towards their rulers in pre-conquest period that the peasants considered the rulers as the real owners of the land.[1] The author has perhaps drawn this inference from the attitude of the peasants towards their Rajput _Zamindars_ in his period. The recognition of the chiefs as the real owners of land by the peasants in the ancient period was, however, in his view, a wrong notion which could not be accepted as a deciding factor in judging the legal position with regard to the ownership of land in India. The peasants, according to him, were led partly to such a belief on account of their views that the rulers had divine powers and partly it was the result of the unlimited authority exercised by the chieftains and the experience of the peasants that they had been realising land revenue from them for ages. He concludes his argument on this point with the assertion that the notion attributing ownership of land to the rulers during the pre-conquest period was against the injunctions of

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1. _Ahkam-ul 'Arazi_, ff. 53b-54a.

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the *Shariat*.[1] In emphasising this point he was apparently trying to make out a case that the Rajput *Zamindars*, who staked their claim on land under their jurisdiction on the strength of usage and customary sanction surviving from the pre-conquest period, could not be considered as the real owners.

Regarding the *zamindars* of his own times, he made the additional point that they could not justifiably claim the ownership of land on the strength of the practices exhibited by the earlier Muslim rulers of India. He disputed the view that any Muslim ruler ever took a decision conferring ownership-rights on the *zamindars* of the post-conquest period. According to him, it was very unlikely that a Muslim ruler would have considered it prudent to bestow such rights on the *zamindars*, as such a course was against expediency and would have led to enhance their power and authority.[2]

Arguing against the notion that land in India was *kharaji* and the peasants were proprietors, Muhammad A'la also

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1. Ibid., f. 54a. Here, Muhammad A'la has quoted Qazi Jakkan Hanafi Gujarati, *Khazanat-ur Riwayat* (MS: Aligarh) University Collection, *Arabia, mazhab* (2) 66. f. 176b) to highlight the Islamic rule that the ruler is not the owner of the entire land within his dominion.

2. *Ahkam-ul 'Arazi*, f. 56a.

points out that it was popularly reported that the peasants never claimed to be owners of land, nor did they object if the land was taken away by the zamindars from any one amongst them and given to someone else for cultivation. Instead, they considered themselves merely as cultivators.[1] Moreover, in his opinion, the peasants were not treated by the Muslim rulers as the owners of land as their way of dealing with them shows. To illustrate this point he has referred to the rules which were applied to the peasants who abandoned the land. According to the established practice under the Mughal Empire, the land abandoned by a peasant was given to some new tenants for cultivation on lease and out of its produce no share was reserved for the original peasant.[2] Quoting from the Fatawa-i 'Alamgiri, he declared that this practice was against the regulations prescribed in the Sheri'at for the kharaji land.[3]

1. Ibid., ff. 55a, 56b-57a. From this evidence the author deducts the point that in such a situation the question of restoration of land to the peasants did not arise.

2. Ahkam-ul 'Arazi, ff. 60a-b.

3. According to the Fatawa-i-'Alamgiri (Vol. II.p.274) the kharaj (in the above situation) should be taken out from the revenue (collected from the new cultivators) and all surplus should be kept for the original peasants. The same points have also been described in Aurangzeb's farman (articles III & IV) addressed to Muhammad Hashim. (Mirat, I, pp. 283-88).

Muhammad A'la cites one more example in support of his assertion that land in India was not treated by the Muslim rulers as kharaji. According to him the Shariat does not permit the rulers to make any demand upon the peasants of the kharaji lands beyond the limit of 1/2 of the total produce.[1] But the practice prevalent under the Muslim rule in India was quite different. The total realisation from the peasants, including land revenue as well as other cesses, used to be much more than 1/2 of the produce.[2] There might be two explanations for this. Either they did not treat the land as kharaji, or they were neglecting the rules of the Shariat regarding the rate of taxation in case of kharaji lands. The author preferred to accept the first explanation as in his belief the Muslim rulers could not go against the rules of the Shariat.[3] So he drew the conclusion that the Indian rulers never treated the land, in strictly legal sense, as kharaji, nor they accepted any category of the people (e.g. zamindars and peasants) as the real owners of the land.[4]

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1. Ahkam-ul 'Arazi, f. 59a, Cf. Fatawa-i 'Alamgiri, II, p. 273.

2. For magnitude of land revenue demand and exaction of numerous cesses during the Mughal rule, see Irfan Habib, Agrarian System of Mughal India, pp. 190-96, 243-48.

3. Ahkam-ul 'Arazi, f. 59a.

4. Ibid., f. 61b.

Besides, there were two other customary practices which, according to Muhammad A'la, supplemented his evidence against ownership of land being vested in the *zamindars* or peasants. Firstly, whenever the peasants absconded without paying the land revenue it was never demanded from the *zamindars*. This meant that the *zamindars* were not the primary revenue payers and so, according to him, were not the proprietors of the land.[1] Secondly, the rulers possessed and demonstrated full authority to resume the lands of the *zamindars* and the peasants in case of their inability to fulfil their respective obligations. This, to his mind, was a conclusive proof that they were not regarded as the real owners.[2]

Summing up the discussion, Muhammad A'la gives his own assessment about the agrarian relations, and the position of the *zamindars* and peasants with regard to their rights in the land. In his opinion what had happened actually after the Muslim conquest in India, was that the rulers left most of the subjugated chiefs (*ra'usa*) in their former position as exercising

1. Ibid., f. 59b.

2. *Ahkam-ul 'Arazi*, ff. 59b-60b, 61a-b. It was also a significant fact according to the author that the peasants never resisted or opposed a decision by the state to resume their lands and hand over to other people for cultivation.

authority over the peasants (*ri'aya*).[1] Further, the rulers appointed them as tax-collectors and the extension of cultivation also formed a part of their responsibilities. These chiefs, according to him, were known in his own time as *zamindars*. They enjoyed the position of some kind of state functionaries deriving their authority from royal approval and sanction.[2] Thus to him, the *zamindars* appeared to be some kind of tax-gatherers whose appointments and dismissal was subject to the imperial authority.[3]

With regard to the position of the peasants, Muhammad A'la observes that after the conquest they were also conciliated, and allowed to remain in possession of the land occupied by them and to cultivate it in return for a fixed amount (*mahsul-i muqarrar*). They were encouraged by the state to extend cultivation as much as possible. According to him an explicit order authorising the peasants to retain their possession of the land cultivated by them was not required as

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1. *Ahkam-ul 'Arazi*, f. 54b. This practice of the early conquerors to enter into a settlement with the subdued ruling class reducing them to the position of tributory chiefs has been noticed by the chroniclers of the 13th and 14th centuries. See *Tabaqat-i Nasiri*, p. 247; Barani, pp. 106, 182.

2. *Ahkam-ul 'Arazi*, ff. 54b-55a. Muhammad A'la apparently makes no distinction between the position of the tributory chiefs and ordinary *zamindars* and treats them as a single category.

3. *Ahkam-ul 'Arazi*, f. 57a.

it was sanctioned by custom and usage. This arrangement (between the state and peasants) was characterised by him as (*muzara'at*   ),[1] and the appropriation from the peasants as *ujrat* (fixed rent).[2] Though during the time it was not based on a formal agreement between the state and the peasants, but on the authority of the *Fatawa-i 'Alamgiri*, Muhammad A'la says that in certain cases cultivation on lease *muzara'at* is valid without execution of a formal deed.[3]

From the assessment of the situation given by Muhammad A'la it appears that he found it difficult to explain the nature of proprietary right in land obtaining in the Mughal India in the familiar terms of *ushri* and *kharaji*. Instead, he came to the conclusion that the land was the property of no one in particular, whether the *zamindars* or the peasants and that it remained in the position of owner-less property which could be utilized by the ruler for all the purposes which the Islamic law has prescribed.

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1. *Muzara'at* denotes a contract between the owner of the land and the cultivator stipulating that the produce would be shared between them in a fixed proportion (Aghnides, p. 384; Abdul Hamid Muharrir Ghasnavi, *Dastur-ul Albab fi 'ilm-il hisab*, Rotograph No. 175 (MS: Rasa Library, Rampur), Research Library, Department of History (AMU., Aligarh) ff. 39a-40a.

2. *Ahkam-ul Arazi*, ff. 57b, 59b-60a, 61b.

3. Cf. *Fatawa-i 'Alamgiri*, IV, p. 65.

RESUME

The Mughal concept of state, as we have seen above, was the result of a long evolutionary process, synthesising the Islamic, the Turko-Mongol and the Indian ideals. The state established by the Mughals was monarchical in nature, but was broad-based with enlightened spirit and liberalism. The Muslim rulers of medieval India repeatedly emphasised in words as well as in their policies and measures that it was almost impossible to adopt in toto the Islamic ideals of government and political institutions in a country where majority of the population was composed of non-Muslims with their own political, social and economic institutions. As a matter of fact, whenever the Muslims established their rule in a new land they had to face new situations and new problems. In order to meet the new situations they felt the need of interpreting the Islamic law in such a way that local traditions could be assimilated with the Muslim Institutions. Obviously the same happened in case of the Mughal emperors. It is evident from the above study that in their conduct of state affairs they were not guided by the Islamic principles alone. There were many other factors also which had some bearing on the shaping of their policies, particularly the new social milieu in which they worked and the unforeseen exigencies of the new situations.

Legally the Mughal emperor, professing the Muslim faith, was bound to rule in accordance with Islamic laws having

no power of legislation, but in practice he was an absolute ruler wielding full authority of legislation, specially in political and administrative affairs. The Mughal administration was mainly governed by the state laws (popularly known as _zawabit_) made by the emperor drawing inspiration at times from the Islamic law, the Timurid traditions and the local customs and practices. Only in matters relating to the personal law of his subjects, both Muslims and non-Muslims, the emperor could not interfere, and their respective legal codes were faithfully applied. In other spheres modifications, changes and new enactments were frequently made during the Mughal rule. Of all the Mughal emperors, Aurangzeb is generally regarded as the most orthodox. No doubt he attempted conscientiously to conform several aspects of the state administration to the dictates of the _shariat_ but, as we have already seen, certain modifications and changes were introduced in his reign also. Aurangzeb is reported to have admitted himself of facing difficulty in bringing conformity between temporal regulations and religious prescriptions. He too appreciated the need of taking into consideration the demands of time in formulating rules for the conduct of state affairs.

Regarding the nature of the laws that were in operation in the Mughal period we come to the conclusion that there was no uniform set of laws. To the same type of problems the laws, which were applied, differed from period to period

and, more interestingly, from case to case even in the same period. Therefore, it is difficult to say definitely as to which set of rules was generally applied to the above discussed problems in each reign. Broadly speaking, it may be said that in matters pertaining to the proprietary rights in movable or immovable property the Islamic law was comparatively more adhered to than in other spheres. In dealing with the problems of crime and punishment, the state laws were given upper hand. The influence of the local practices and the conventions is frequently visible in relation to the commercial and the international legislation. In spite of these variations, the Mughal emperors brought about uniformity in their laws at least from one angle. Throughout their rule administrative problems and all matters relating to the maintenance of peace and order in the country were decided by the state laws which were applicable to all subjects of the empire irrespective of their caste and creed.

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	NAME OF THE MURDERED PERSONS	DESIGNATION AND POSITION	MURDERED BY	IN THE REIGN OF	EXECUTED IN RETALIATION OR GIVEN OTHER KINDS OF PUNISHMENT	PARDONED	BY HEIRS OF THE MURDERED OR AT THE INSTANCE OF THE GOVERNMENT	LAWFUL OR UNLAWFUL	SOURCES
1.	Azam Khan	Prime Minister of Akbar	Adham Khan	Akbar (17. May, 1561)	Killed (Hands and feet bound, cast down from the top of terrace of the Royal Palace).	—	By the order of the emperor.	Unlawful (mode of punishment)	Muntakhabu-t-tawarikh II, pp. 52–53; Akbar Nama II, pp. 175–76; Tabaqat-i-Akbari II, p. 257. II, p. 71
2.	Wife of Khwaja Muazzam	—	Khwaja Muazzam (maternal uncle of Akbar, a mad man)	Akbar (1563)	Executed (According to another refrence in the same source the murderer was imprisoned at Gwalior where he died)	—	At the instance of the government	Unlawful (mad is not liable to the punishment)	M.T. III, p. 338; A. Nama II, pp. 216–19; T. Akbari II, pp. 175–76.
3.	Muftis	(who had given verdict for execution of those persons who had attacked and wounded Qazi Habib)	Mirza Muqim	Akbar (February, 1569)	Executed	—	By the order of the emperor in accordance with the fatwa of Abd-un-Nabi and other Ulama	Lawful.	M.T. II, p. 124.
4.	Changez Khan	One of the King of Gujarat	Jajhar Khan (one of the Amirs of Gujarat)	Akbar (19 March, 1573)	Killed (thrown under the in retaliation feet of an elephant)	—	On demand of mother of the murdered (after the case was investigated at the order of the emperor).	Unlawful (mode of punishment)	M.T. II, p. 147; Ak. Nama III, p. 32; T. Akbari II, p. 263.
5.	Alauddin	Amal Guzar (Revenue Collector)	Talib (Servant of Mirza Aziz, Governor of Gujarat)	Akbar (14 March 1579)	Executed	—	By the Governor.	Unlawful	Ak. Nama III, p. 266; Iqbal Nama Jahangiri, p. 327.
6.	Khwaja Alam	Khwaja Sara	one of wrestler	Akbar (1581)	Executed	—	By the order of the emperor	Lawful	Ak. Nama II, p. 351;
7.	Mulla Ahmad Thattawi	A shia scholar.	Mirza Faulad Beg	Akbar (3. January, 1588)	Executed	—	By the order of the emperor.	—	M.T. II, pp. 364–65; Ak. Nama II, p. 527.
8.	Yadgar Halti	A poet of Kashmir	Baqai (Son of the murdered)	Akbar	Executed	—	By the order of the emperor	unlawful (because Yadgar was killed through poisoning in punishment of which only blood-money is required)	M.T. III, p. 222;
9.	Mother of Pahar	—	Pahar (governor of Jalore, a place in Jodhpur)	Jahangir (1616)	Executed	—	By the order of the emperor (after inquiry in the case)	Lawful	Tuzuk, p. 174
10.	(An Owner of a house)	—	a thief	Jahangir (1617)	Executed	—	By heirs of the murdered at the order of the emperor	Lawful	Tuzuk, p. 214
11.	(Untraceable)	—	Hushang (nephew of Khan Alam, Jahangir's ambassador to Persia)	Jahangir (1620)	Executed	—	By the order of the emperor (after getting legal proof for the murder)	Lawful.	Tuzuk, p. 333; Maasir-i-Jahangiri, p. 335
12.	Ali Naqi	—	Prince Murad Bakhsh	Shah Jahan (16. November, 1661)	Executed (By sword)	—	On demand of sons of the murdered, the emperor ordered the execution after getting legal proof for the crime and judgement of the Qazi	Lawful	Amal Salih, III, pp. 344–45; Futuhat-i-Alamgiri, ff. 47b–49a; Bernier I, pp. 131–32. N. Dilkusha f. 27a
13.	Qazi Abul Mukarim	Qazi (Son of Qazi Abdul Wahab)	two disciples of Audhu Bairagis a Hindu Jogi	Aurangzeb (3. June, 1669)	Executed	—	By the order of the emperor.	Lawful	Maasir-i-Alamgiri, p. 85.
14.	Qazi Ali Akbar	Qazi of Lahore	Qamaruddin Khan (Governor), Nizamuddin (Kotwal of Lahore)	Aurangzeb (16. January, 1680)	Executed (only Nizamuddin)	—	By heirs of the murdered. (after investigation of the case at the instance of the emperor).	Lawful.	Khafi Khan II, pp. 256–57; Maasir Alamgiri, p. 188.
15.	Farjam Birlas	Faujdar of Attock	His nephew	Aurangzeb (13. March, 1672)	Executed	—	By heirs of the murdered (in accordance with the decision of the Qazi).	Lawful	M. Alamgiri, p. 126
16.	(A Jeweller)	—	Tiwari	Aurangzeb (13. March, 1700)	Executed	—	At the instance of the government with the consent of the heirs who did agree to pardon Tiwari even on his offer to accept Islam.	Lawful	Akhbarat, 43rd R.Y. f. 149
17.	(Two Portuguese Women)	—	A portuguese	Aurangzeb	Executed	—	At the instance of the government after demand of the heirs for the same (The Portuguese had refused the court's offer to pardon him on accept of Islam.	Lawful	Manucci, II, p. 425.
18.	(An Englishman)	—	The followers of Pahelwan Safdar (governor of Olpad near Surat)	Jahangir (October, 1623)	—	Pardoned (in return of Blood Money)	With the consent of the Chief of the East India Company	Lawful	English Factories, II (1622-23), p. 284.
19.	Mania	A potter	Sunder Bai	Aurangzeb (4. July, 1678)	—	Pardoned	By heirs of the murdered.	Lawful	Waqai-i-Ajmer, p. 2
20.	Brother of Din Mohammad	—	Chitra (Muqaddam of Sarsara, Ajmer)	Aurangzeb (April, 1679)	—	Pardoned	By the brother of the murdered.	Lawful	W. Ajmer, p. 200
21.	Ganga Ram	A servant of Anandi (Beldar)	Anandi	Aurangzeb (1680)	—	but Pardoned imprisoned by the [illegible]	By heirs of the murdered.	Lawful	W. Ajmer, pp. 607–8

	NAME OF THE MURDERED PERSONS	DESIGNATION AND POSITION	MURDERED BY	IN THE REIGN OF	EXECUTED IN RETALIATION OR GIVEN OTHER KINDS OF PUNISHMENT	PARDONED	BY HEIRS OF THE MURDERED OR AT THE INSTANCE OF THE GOVERNMENT	LAWFUL OR UNLAWFUL	SOURCES
22.	Qazi Ali Akbar	Qazi of Lahore	Qamaruddin Khan (Governor of Lahore)	Aurangzeb (16. January, 1680)	—	Pardoned (only dismissed from the service)	The heirs did not demand execution or blood money (At the instance of the government)	Unlawful	M. Alamgiri, p. 188.
23.	Chatta	—	Pir Mohammad	Aurangzeb (1703)	—	Pardoned	By heirs of the murdered	Lawful	Akhbarat, 46th. R. Yr. 1703
24.	(Two Court Ladies).	—	Mahan Anga (step mother of Akbar)	Akbar (17 May, 1561)	—	Pardoned	By the emperor (out of regard for his mother)	Unlawful	Ak. Nama II, p. 143
25.	Paternal Aunt of Rustam.	—	Rustam (A Mansabdar)	Shah Jahan	—	Pardoned	By the emperor (when he revised his judgement about execution of Rustam in retaliation)	Unlawful	N. Dilkusha, ff. 27 a
26.	Ahad Beg	A soldier in the army of Prince Mohammad Akbar.	Suhrab (another soldier of the same army)	Aurangzeb (September, 1680)	—	Pardoned	By the emperor (on the intercession of Prince Shah Alam)	Unlawful	Jaipur Akhbarat, 24th. R. Yr. 1680
27.	(A custom officer)	—	A soldier (who was enraged on checking by the officer)	Aurangzeb	—	Pardoned	By the emperor (in consideration of the sentiment of the young soldier.)	Unlawful	Manucci II, p. 163
28.	Didar Khan & sister of a Scribe.	—	A Scribe	Aurangzeb	—	Pardoned	By the emperor (on offer of the scribe to except Islam)	Unlawful	Bernier, p. 131
29.	(Parent of a Muslim Woman)	—	Kalyan (Son of Raja Vikramajit)	Jahangir (1607)	Given life imprisonment	—	By the order of the emperor	Unlawful	Tuzuk, p. 50.
30.	Mirza Badiuzzaman	Son of Mirza Shah Rukh	Brother of Badiuzzaman	Jahangir (1622)	Imprisoned	—	By the order of the emperor (mother of the murdered did not demand retaliation)	Lawful	Tuzuk, p. 360; Mirat-i-Ahmadi I, p. 195
31.	(A Military Commander)	A mansabdar of 1000	His servant	Shah Jahan	Imprisoned (for six months)	—	By the Governor (inspite of demand by the relative of the murdered for execution)	Unlawful	Tavernier I, pp. 122 – 23
32.	Wife of Mohammad Raza	—	Mohammad Raza (Yasawal, officer of parade)	Aurangzeb (1st. August, 1661)	Imprisoned	—	By the governor	—	Waqai-i-Deccan, p. 59
33.	Aasa	A residence of Jodhpur	Pal	Aurangzeb (1679)	Imprisoned	—	By the order of the Governor	—	W. Ajmer, p. 232
34.	Tayyab	A cannonier	Jan Mohammad (who was enraged on hering unethical language about his spritual mentor)	Aurangzeb (1680)	Imprisoned	—	By the Governor (awaiting imperial order about the case).	—	W. Ajmer, p. 595
35.	Mohammad Amin Kashmiri	—	Salamat Khan	Aurangzeb (20. Oct, 1695)	Imprisoned	—	By the Kotwal (who was ordered by the emperor to do the same on representation by the heirs of the murdered)	—	Akhbarat, 39th. R. Yr. ff. 22 – 23
36.	(A mace-bearer)	—	Mohammad Salih (a mad man) A mansabdar of 1000/250	Aurangzeb (13. November, 1681)	Dismissed from service	—	By the order of the emperor	Lawful	Akhbarat, 25th. R. Yr. f. 403.
37.	(Three revenue-collectors)	—	Vijay Singh (a mansabdar of 500/30)	Aurangzeb (21st. December, 1681)	Dismissed from the service	—	By the order of the emperor	—	Akhbarat, 25th. R. Yr. f. 521
38.	Kalawant	A State official	Ajab Singh	Aurangzeb (23rd. Feb. 16	Dismissed from the service	—	By the order of the emperor	—	Akhbarat, 47th. R. Yr. ff. 197 – 98
39.	Some followers of Fazal Ali Khan and Motamad Khan (Mansabdars)	—	(not mentioned)	Aurangzeb (9. September, 1700)	Fazal and Motamad Ali Khan were demoted	—	By the order of the emperor	—	Akhbarat, 43rd. R. Yr. f. 208
40.	Buddhu	—	Manohar	Aurangzeb	Property of the Murdered was confiscated by the Amin of the pargana as he had fled away.	—	At the instance of the governor	—	W. Ajmer, p. 265
41	Shaikh Taj & Sayed Baqi	Servant of Iradat Khan, Qiladar of Zafar Nagar.	Jalan Afghani	Aurangzeb (14. March, 1663)	Property of the murdered was confiscated.	—	At the instance of the government	—	W. Deccan, p. 93
42.	(A house-wife)	—	His husband	Aurangzeb	Subjected to monetary fine	—	At the instance of the government	—	Fryer, I, p. 245.
43.	Abdul Momin	A mystic	(Unknown)	Aurangzeb (17. October, 1704)	Kotwal was ordered to investigate the case.	—	By the emperor	—	Akhbarat, 48th. R. Yr. f. 185

VALUE OF THE PROPERTY ADJUSTED AGAINST STATE DEBT	HEIRS AND RELATIVES LEFT BY THE DECEASED	VALUE OF THE PROPERTY RESTORED TO THE HEIRS	DETAILS OF DISTRIBUTION OF THE PROPERTY AMONG THE HEIRS	IN ACCORDANCE WITH OR AGAINST THE SHARIAT	PLACE OF DEPOSIT OF THE ESCHEATED PROPERTY			SOURCES
					Khazana-i-Amira / Sarkar-i-Khassa	Baitul Mal	NOT MENTIONED	
—	—	—	—	IN ACCORDANCE	Sarkar Diwan-i-Aala.	—	—	Muntakhab-ut-Tawarikh II, pp. 217-18; Tazkira-i-Humayun wa Akbar, p. 349.
—	One nephew Mirza Beg	—	—	—	Khazana-i-Amira	—	—	M.T. II, p. 227; III, p. 241
—	Sons	—	—	—	Khazana-i-Amira	—	—	M.T. II, p. 311; III, pp. 70-71; Maasir-ul-umara, III, pp. 552-57,
—	Sons	Horses, elephants and other goods	Given to his sons and agents	—	khazana-i-Padshahi	—	—	M.T. II, p. 374; III, p. 88.
—	Three Sons	—	—	—	—	—	Not Mentioned	M.T. II, p. 406; III, p. 168; M.U. I, pp. 563-65.
—	—	—	—	—	—	—	Not Mentioned	M.T. II, p. 406; III, p. 168
—	Two Sons	—	—	—	—	—	Not Mentioned	Akbar Nama III, pp. 717, 749, 764, M.U. II, pp. 590-601
—	—	—	—	IN ACCORDANCE	—	—	Not Mentioned	Tuzuk, p. 22; M.U. I, pp. 605-608
—	Sons	4 lac rupees	Given to his sons.	In accordance	—	—	Not Mentioned	Ak. NAMA, I, p. 397; Tuzuk, p. 312, M.U. II, pp. 642-45
—	Sons and daughter (Nur Jahan)	—	Given to his daughter	Against.	—	—	Not Mentioned	Tuzuk, pp. 339-401 M.U. I, pp. 127-34; De Laet, p. 198
—	three sons and five daughters	20 lacs and the house of Lahore	The cash given to his sons and daughters. The house of Lahore given to Dara Shukoh	—	Sarkar	—	—	M.U. I, p. 158; English Factories, VII (1642-45), p. 25.
—	wife (christian)	The whole property	Given to his wife	—	—	—	Not Mentioned	Manucci, I, pp. 194-95
—	Five sons.	Residue (after deducting the state debt.)	Given to his sons.	In accordance	Sarkar-i-khassa	—	—	Waris, Badsha Nama, pp. 16-17; M.U. I, pp. 162-67
—	Four Sons	The whole property	Given to his sons 1- Raja Anerudh 600000 2- Arjun 300000 3- Bhim 60000 4- Hergas 40000	—	—	—	Not Mentioned	Waris, p. 154; M.U. I, pp. 250-56
—	Sons	—	—	—	—	—	Not Mentioned	M.U. II, pp. 429-37; E.F. VIII (1646-50), p. 120

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	NAME OF THE DEACEASED PERSONS	POSITION	RANK	DATE OF DEATH A.H	DATE OF DEATH A.D	PROPERTY LEFT BY THE DEACEASED: CASH	KIND	TOTAL VALUE	CAUSE OF ESCHEAT: STATE-DEBT	HEIR-LESS	NOT DEFINED
1.	Munim K'an	Governor of Bengal	5000	1, Rajab, 983	12, Oct. 1575	TREASURE	Valuables	Unestimated	—	Heir-less	—
2.	Khavaja Aminuddin Mahmud	Central Bakhshi	1000	Zulhijja 983	1576	Money	—	Unestimated	-		Not Defined
3.	Abd·llah Sultan puri	SHAIKH-UL-ISLAM, QAZI	—	990	1582	Gold	—	Unestimated	-	-	Not Defined
4.	Shaikh Ibrahim Chishti	Governor of Fatah-pur Sikri	2000	999	1590	Cash	Horses, Elephants, and goods.	25 crores (cash).	-	-	Not Defined
5.	Hakim Humam	Bakawal Beg (superintendent of kitchen)	600	6 Rabi-ul-Awal 1004	30 October 1595	—	Mal (Property)	Unestimated	-	-	Not Defined
6.	Kamalay	Sadr.	—	7 Rabi-ul-Awal 1004	31 October 1595	—	Mal (Property)	Unestimated	-	-	Not Defined
7.	Shahbaz Khan	Kotwal of imperial army	2000	1008	1599	—	Valuables	Unestimated	-	—	Not Defined
8.	Shah Quli Mahram	Governor of Punjab	3500	1010	1602	—	Mal (Property)	Unestimated	—	Heir-less	—
9.	Shah Beg Khan Arghun Khan-i-Dauran.	Governor of Thatta	5000	1029	1620	Naqd (Cash)	Goods	4 lac rupees	-	-	-
10.	Itimad-ud-Daula	chief Wazir	6000/3000	1030	1621	—	Mal (Property)	Unestimated	-	-	-
11.	Asaf Khan	Governor of Punjab	9000/9000	1051	1641	Naqd (Cash) gold and silver	Buildings and gardens at Delhi, Agra and Kashmir; haveli at Lahore	2½ crores; 20 lacs.	-	-	Not Defined
12.	Saadat Khan	A slave of Shah Jahan and incharge of betel consumed by the Emperor	—	1054	1644	—	Property	Unestimated	—	-	-
13.	Islam Khan Mashhadi	Governor of the Deccan	7000/7000	14 Shawal 1057	24 November 1647	Cash	Property	25 lacs rupees	State Debt.	-	-
14.	Raja Bithal das Gaur	Appointed to Kabul expedition with the Prince Aurangzeb, Faujdar of ...	5000/5000	1061	1651	Ten lac rupees	—	Ten lacs	-	-	-
15.	Said Khan	Governor of Kabul	7000/6000	2 Safar 1062	14 January 1652	—	Valuables and goods.	Unestimated	-	-	Not defined